

Preliminary Report on the Proposal to Consolidate the City of Fairbanks and the Fairbanks North Star Borough

December 2000



Alaska Constitutional Convention meeting
in Fairbanks, February 1956

“The (Constitutional Convention’s Local Government) Committee conceived the long-run relationship of the borough and the city as a gradual evolution toward unified government.” *Final Report on Borough Government*, Alaska Legislative Council and the Local Affairs Agency, p.43, January 1961.



Deborah B. Sedwick
Commissioner

Tony Knowles
Governor



This is the Department of Community and Economic Development's (DCED) Executive Summary and Preliminary Report regarding the petition to consolidate the City of Fairbanks and the Fairbanks North Star Borough. The report can also be found on the internet at the following address:

http://www.dced.state.ak.us/mra/Mrad_lbc.htm

The report is preliminary in the sense that it is issued as a draft for public review and comment in accordance with 3 AAC 110.530(b). The law requires DCED to issue a final report after considering written comments on the preliminary report.

DCED complies with Title II of the Americans with Disabilities Act of 1990. Upon request, this report will be made available in large print or other accessible formats. Requests for such should be directed to the local Boundary Commission staff at 907-269-4560.





ACKNOWLEDGMENTS

The Department of Community and Economic Development (DCED) acknowledges the efforts of the voters who initiated the petition for consolidation of the City of Fairbanks and the Fairbanks North Star Borough. Don Lowell (Petitioners' Representative), Judi Slajer (former Chief Financial Officer of the Fairbanks North Star Borough), and others who participated in the drafting of the Petition and/or the Petitioners' Reply Brief in this proceeding deserve particular recognition. As is noted in this report, preparation of any credible petition for consolidation of local governments in Alaska is a difficult task. The Petitioners' interest in improving the structure of their local government warrants recognition.

DCED also recognizes the efforts of the Fairbanks North Star Borough, City of Fairbanks, and Interior Taxpayers' Association, Inc., all of whom filed responsive briefs in this proceeding. A substantial effort went into the preparation of those responsive briefs. The responsive briefs contributed significantly to the understanding and analysis of the pending consolidation proposal. In addition, Bonnie Williams and James E. Moody are recognized for taking the time to write letters to expressing their views on the proposal.

While many of the Petitioners' views concerning the pending consolidation proposal are fundamentally opposite of those expressed by the respondents and correspondents, DCED takes the view that all of the materials submitted on both sides of the issue were offered in good faith. As noted in this report, the standards governing consolidation are intended to be flexibly applied. Therefore, there is ample room for legitimate differing viewpoints of the issue on the proposed consolidation of local governments in the greater Fairbanks area.

This preliminary report was prepared under the policy direction of

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- Patrick K. Poland, Director, Community & Business Development Division, DCED.

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Executive Summary

DCED's Preliminary Report on the Proposal to Consolidate the City of Fairbanks and the Fairbanks North Star Borough

DCED's CONCLUSIONS AT A GLANCE

**CONSOLIDATION STANDARDS ARE MET.
VOTERS CAN BEST DECIDE WHETHER THE
PENDING PROPOSAL SERVES THE REGION'S
POLITICAL INTERESTS.**

Registered voters of the City of Fairbanks (City) and the Fairbanks North Star Borough (FNSB) have petitioned the Local Boundary Commission for consolidation of those two municipal governments. As staff to the Commission, the Alaska Department of Community and Economic Development (DCED) is required by State law to examine the merits of the consolidation proposal. The law further requires DCED to publish its analysis, conclusions, and recommendations in a preliminary report made available for review and comment by interested persons. Once public comments on its preliminary report are considered, DCED will issue its final report on the proposal. The Local Boundary Commission will subsequently conduct at least one public hearing on the proposal in the Fairbanks area.

Two essential questions exist concerning the pending proposal. The first is, does it meet the legal standards established in Alaska's Constitution, statutes, and administrative code that govern municipal consolidation? The second is, does it serve the political interests of the State, the local governments involved, and citizens of the affected area?

The Local Boundary Commission will answer the first question by applying the evidence in this proceeding against the applicable legal standards. In addition to considering the extensive written record, the Commission will receive testimony and public comment on the proposal from local officials and other citizens of the greater Fairbanks area. The Commission has authority to approve the petition as presented, refine the proposal through amendments and the imposition of conditions, or reject the proposal altogether.



The FNSB, City, and Interior Taxpayers' Association, Inc., (respondents) have filed briefs asserting that the pending consolidation proposal fails to satisfy certain of the legal standards governing consolidation. DCED considers the opposing briefs of the respondents to have been prepared and filed in good faith. Moreover, the respondents' opposing briefs have been helpful in framing the complexities of the proposal pending before the Commission.

Alaska's Supreme Court has held that the standards governing borough incorporation – the same standards that pertain to this consolidation proposal – are to be flexibly applied. Those standards are broadly stated. Consequently, there is room for legitimate disagreement as to the proper application of the standards.

After carefully considering the record in this proceeding, DCED concludes that the consolidation proposal satisfies all of the applicable legal standards. If the Commission concludes otherwise, it must deny the petition. Even if the Local Boundary Commission determines that the consolidation proposal meets the standards, the Commission has discretion whether to grant the petition.

The reasonable application of the Commission's discretion in granting a petition that meets the standards rests on the second question – whether the pending consolidation proposal serves the political interests of the State, the local governments involved, and citizens of the affected area. That question is at least of equal importance to the first. The Alaska Supreme Court noted long ago that the Commission's work "involves broad judgments of political and social policy." See *Mobil Oil Corp. v. Local Boundary Commission*, 518 P.2d 92, 98 (Alaska 1974).

The Commission's interests in the political aspects of the proposal center on matters of concern to the State of Alaska. In general terms, the pending consolidation proposal serves the interests of the State because it is consistent with the constitutional policies favoring maximum local self-government with a minimum of local government units.

The political interests of the affected local governments and their citizens are more numerous and diverse. Those interests center on the structure of the proposed consolidated borough and the effects of consolidation.

A broad range of political options was available to the Petitioners in structuring their consolidation proposal. As other communities have done previously, the Petitioners in this particular instance could have proposed sweeping changes to the structure of their local governments. For example, they could have proposed to form a home rule borough, include the City of North Pole, alter assembly composition, change the form of assembly representation, substantially modify the existing tax structure, make significant changes in present levels of service, and amend the boundaries of existing or proposed service areas.

However, the Petitioners deliberately avoided sweeping changes. The significant effects of the pending consolidation proposal are limited largely to the dissolution of the City of Fairbanks and its reconstitution as a multi-purpose service area of the consolidated borough. The Petitioners adopted the philosophy that further refinements to the structure of local government should be made incrementally as local officials and citizens deem such change appropriate.

The three respondents in this matter are critical of key aspects of the consolidation proposal. For example, they fault the Petitioners' choice regarding classification of the proposed consolidated borough. Specifically, they assert that a proposal to replace the home rule City of Fairbanks with a service area in a general law borough is fatally flawed.



DCED respectfully disagrees with the respondents over the classification issue. Home rule is indeed the theoretical pinnacle of local government status in Alaska. However, as is detailed in DCED's preliminary report, a number of factors mitigate the concerns raised by the respondents regarding this point. Among these is the fact that, over time, the powers of home rule cities and boroughs have been somewhat diminished while, conversely, the powers of general law cities and boroughs have been substantially enhanced through actions of Alaska's legislature and judiciary. The effect of such actions is that general law cities and boroughs in Alaska can now be reasonably characterized as having "home rule-like" powers. Moreover, the Petitioners' decision to propose a second class consolidated borough was, in DCED's view, the only practical option available to them. For reasons detailed in DCED's preliminary report, it would have been impractical and probably politically unacceptable for the Petitioners to put forward a home rule proposal. Lastly, it must be stressed that the initial classification of the proposed consolidated borough is subject to change – local officials or voters could initiate proceedings to adopt a home rule charter for the consolidated borough at any time.

Respondents also assert that provisions in Alaska's Constitution favor the existence of the City of Fairbanks over the proposed Urban Service Area. DCED does not concur. Alaska's Constitution encourages unification and consolidation of city and borough governments. When such occurs, former city governments are typically reconstituted as urban service areas.

Another significant concern raised by the respondents is their perception about the financial impacts of consolidation. All three respondents and even the Petitioners agree that there is little duplication of services between the City and FNSB. However, the parties disagree as to the financial effects of the proposed consolidation. The FNSB estimates that consolidation will actually cause the cost of local government operations to increase by more than \$2 million annually. In contrast, the Petitioners initially claimed that consolidation would save more than \$2 million annually; however, they subsequently trimmed their estimate of annual savings to about \$580,000. Both the FNSB and Petitioners consider their respective estimates to be conservative.

In addition to effects on operating costs, the FNSB and the Petitioners agree that there will be one-time transition costs associated with consolidation. However, again, there is no agreement as to the figure. The FNSB estimates that transition costs during the first three years will total nearly \$6 million. The Petitioners offer no specific estimate, but implicitly suggest that the figure will be more on the order of \$1 million.



Vic Fischer, former Constitutional Convention delegate and expert on local government in Alaska

DCED recognizes that financial effects of consolidation are difficult to predict with accuracy. The few other areas of Alaska that have combined local governments have described the transition process as difficult. In the long-term, however, all consider it to have been worth the struggle.

The City of Fairbanks and ITA were critical of the Petitioners' choice to exclude the City of North Pole from the consolidation proposal. Unification, as contrasted with consolidation, would have compelled the inclusion of the City of North Pole. The Petitioners recognized that efforts to unify the City of Fairbanks, City of North Pole, and FNSB were rejected in 1973 and again in 1987. In this instance, the Petitioners chose to pursue consolidation because of its flexibility. Vic Fischer, former Constitutional Convention delegate and expert on



local government in Alaska, recently characterized a similar pending consolidation proposal – one that would combine the City of Ketchikan and the Ketchikan Gateway Borough but leave the City of Saxman in place – as serving Alaska’s constitutional principles of local government. DCED reached the same conclusion with respect to the Fairbanks consolidation proposal.

The respondents also raised a number of other policy and technical concerns. These included matters regarding the future of the City’s assets such as its sizable permanent fund; treatment of hotel tax revenues; municipal labor relations; and whether the boundaries of the City of Fairbanks are suitable for the boundaries of the Urban Service Area proposed in the petition. While these are important issues, they are not impediments to consolidation. There are ways to preserve the City’s permanent fund for the benefit of the proposed Urban Service Area – and, in DCED’s view, it would be appropriate to make such arrangements. Issues concerning labor relations must be addressed in any municipal consolidation. Concerns over the boundaries of the proposed Urban Service Area, if valid, would be within the capacity of the consolidated borough assembly to address.

The respondents’ concerns that the hotel tax will become areawide and future hotel tax proceeds could no longer be used for economic development can be addressed through an amendment to the pending consolidation petition. Doing so would also provide for a more equitable allocation of hotel tax revenues as addressed in DCED’s preliminary report. Consequently, DCED encourages the Local Boundary Commission to consider amending the consolidation petition to provide for the areawide exercise of economic development by the proposed consolidated borough.

In conclusion, DCED views the pending Fairbanks consolidation petition as a good faith effort to improve the structure of municipal government serving the greater Fairbanks area. More than four thousand voters (1,416 City voters and 2,626 additional voters in the remainder of the FNSB) petitioned the Local Boundary Commission to approve the pending proposal to consolidate the City and the FNSB. Supporters of the proposal include a number of prominent residents of the greater Fairbanks community. Among them are numerous leaders of industry and commerce, five current or former State legislators, three former Mayors of the FNSB, five former members of the FNSB Assembly, one former member of the City Council, and two former members of the Local Boundary Commission.

DCED believes that the pending consolidation proposal meets all applicable standards and that it serves the political interests of the State. Whether the proposal serves the political interests of the citizens of the City of Fairbanks and the remainder of the FNSB is a judgment that is best determined by a vote among those citizens. Consequently, DCED recommends that the Local Boundary Commission consider amending the petition to provide for areawide economic development and then approve the petition to enable the voters of the greater Fairbanks area to make the final determination on the merits of the proposal.

Multiple copies of DCED’s full preliminary report on this matter have been distributed for public review and comment. The report is also available for review at the Noel Wien Public Library, 1215 Cowles Street in Fairbanks. Additionally, the report may be viewed on the Internet at:

http://www.dced.state.ak.us/mra/Mrad_lbc.htm



Written comments on DCED's preliminary report will be accepted until **5:00 p.m., January 31, 2001**. Comments received after the deadline may not be considered. Comments on the report or questions about the consolidation proposal should be directed to:

**Local Boundary Commission Staff
Alaska Department of Community and Economic Development
550 West 7th Avenue, Suite 1770
Anchorage, Alaska 99501-3510**

**telephone: 907-269-4559
fax: 907-269-4539
e-mail: Dan_Bockhorst@dcled.state.ak.us**





CHAPTER



BACKGROUND

A. Introduction

On March 20, 2000, voters in the Fairbanks North Star Borough (Borough or FNSB) and City of Fairbanks (City) submitted a petition to the Local Boundary Commission (LBC or Commission) to consolidate¹ the Borough and City.² The Petitioners offered the following six principal reasons for their consolidation proposal:

- to promote maximum local self-government with a minimum of local governmental units;
- to encourage more efficient and effective local government;

- to provide “a better long-term solution to local government issues”;
- to boost the economic climate of the area;
- to equalize areawide costs in maintaining solid waste collection; and
- to equalize nonareawide costs in economic development.

During the ten-week period allowed for public review and comment on the proposal, responsive briefs opposing consolidation were filed by the following respondents:

- City of Fairbanks³;
- Fairbanks North Star Borough⁴; and
- Interior Taxpayers’ Association, Inc.⁵

- 1 “Consolidation” is defined by AS 29.71.800(6) as “dissolution of two or more municipalities and their incorporation as a new municipality.” The petition seeks to dissolve the home rule City of Fairbanks and the second class Fairbanks North Star Borough and to incorporate the Municipality of Fairbanks, a new second class borough.
- 2 The petition was initiated by 4,042 voters of the Fairbanks North Star Borough. 1,416 of those 4,042 voters were also voters of the City of Fairbanks. The 4,042 voters are referred to in this report as the Petitioners.
- 3 The City’s Brief consists of 30 pages accompanied by 11 Exhibits comprising an additional 70 pages.
- 4 The Borough’s Brief and two accompanying appendices weighs 4 lbs., 9.6 ounces.
- 5 The ITA Brief consists of 3 pages.



In addition, timely letters opposing the consolidation proposal were submitted by the following correspondents:

- Bonnie Williams and
- James E. Moody.

On August 25, 2000, the Petitioners filed a reply brief in response to the written opposition of the three respondents and two correspondents. Details about the views of the Petitioners, respondents, and correspondents are provided in Chapter 3 of this report.⁶

Appendix A of this report presents a glossary of terms used in this report that have special meaning in the context of the Fairbanks consolidation proposal.

B. Effects of Consolidation

If approved by the Local Boundary Commission and voters of the Fairbanks North Star Borough, the proposed consolidation would have the following effects:

- The second class Fairbanks North Star Borough will be dissolved.
- A new second class borough, the Municipality of Fairbanks, will be incorporated.
- The Fairbanks city government, a home rule city, will be dissolved.
- The 33.8 square miles within the present boundaries of the City of Fairbanks will become the Urban Service Area in the Municipality of Fairbanks.
- Additions to existing areawide borough powers would be limited to solid waste collections at the transfer stations (currently provided by the FNSB in all areas

except the City of Fairbanks), maintenance of the Fairbanks Health Center (currently funded jointly by the City and FNSB), and cemeteries (currently provided by the City).

- The three current nonareawide powers exercised by the FNSB (emergency medical services, economic development, and fire-works control) would remain nonareawide borough powers, but would then be exercised in the Urban Service Area.
- All the other services currently provided by the City would be exercised by the Borough in the Urban Service Area. These consist of the following:
 1. fire protection;
 2. law enforcement;
 3. environmental services;
 4. building department;
 5. engineering department; and
 6. public works department.

Bed tax revenue, which currently flows to the City of Fairbanks for hotel transactions within the City, and which flows to the Borough for all other hotel transactions within the Borough, would become areawide revenue.

Alcohol and tobacco taxes, currently levied by the City of Fairbanks respectively at 5% and 8%, would become levies of the FNSB within the proposed Urban Service Area.

C. Local Boundary Commission

Petitions for consolidation of local governments in Alaska are subject to approval by the Local Boundary Commission. The LBC is a State board with jurisdiction throughout Alaska. (Article X, § 12, Ak. Const.; AS 29.04; AS 29.05;

6 This report does not summarize redundant views expressed by respondents and correspondents on every point.



The Local Boundary Commission at a recent hearing.

AS 29.06; and AS 44.33.810 - 44.33.828.) In addition to petitions for consolidation of municipal governments, the LBC acts on petitions for the following:

- annexation to cities and boroughs;
- incorporation of cities and boroughs;
- detachment from cities and boroughs;
- merger of cities and boroughs;
- dissolution of cities and boroughs; and
- reclassification of cities.

Additionally, the LBC has the duty to make studies of local government boundary problems.

The LBC consists of five members appointed by the Governor for overlapping five-year terms. Members are appointed, “... *on the basis of interest in public affairs, good judgment, knowledge and ability in the field . . . and with a view to providing diversity of interest and points of view in the membership.*” (AS 39.05.060) Members serve at the pleasure of the Governor. The Chairman is appointed from the state at-large and one member is appointed from each of

Alaska’s four judicial districts. Members serve without compensation. Biographical information about the current members of the LBC is provided in Appendix B.

D. Communications with the LBC

The LBC is a quasi-judicial board. To preserve the rights of petitioners, respondents, and others to due process and equal protection, 3 AAC 110.500 prohibits private (ex parte) contact with the LBC regarding petitions pending before the Commission. The law prohibits such communication between the LBC and others apart from

the Commission’s staff, except during a public meeting called to address the proposal at issue. This limitation takes effect upon the filing of a petition and remains effective through the last date available for the Commission to reconsider a decision under 3 AAC 110.580. Written communications to the Commission must be submitted through its staff.

E. Staff to the Commission

The Alaska Department of Community and Economic Development (DCED) serves as staff to the LBC. The LBC’s staff is required by law to evaluate petitions filed with the LBC and to issue reports and recommendations to the LBC concerning such. The LBC and DCED are wholly independent of one another concerning policy matters.





DCED's staff to the Local Boundary Commission may be contacted at:

Local Boundary Commission Staff
Alaska Department of Community and
Economic Development
550 West 7th Avenue, Suite 1770
Anchorage, Alaska 99501-3510

Telephone: 907-269-4559
Fax: 907-269-4539
E-mail: Dan_Bockhorst@dcled.state.ak.us

F. Legal Standards for Consolidation

Applied to the instant petition, AS 29.06.130(a) provides that the Local Boundary Commission:

1. *may* amend the Petition;
2. *may* impose conditions for consolidation;
3. *may* approve the Petition *if* the LBC determines that the consolidation proposal, with or without amendments and conditions:
 - a. meets applicable standards under Alaska's Constitution,
 - b. meets applicable standards under LBC regulations (3 AAC 110.250, and 3 AAC 110.045 – 3 AAC 110.060),
 - c. meets standards for consolidation under AS 29.06.130(a) which, in this case, consist of the standards for borough incorporation under AS 29.05.031, *and*
 - d. is in the best interests of the state;
4. *shall* deny the Petition *if* the LBC determines that the consolidation proposal, with or without amendments and conditions:
 - a. does not meet applicable standards under the state constitution,
 - b. does not meet applicable standards under LBC regulations (3 AAC 110.250, and 3 AAC 110.045 – 3 AAC 110.060),
 - c. does not meet standards for borough incorporation under AS 29.05.031, *or*
 - d. is not in the best interests of the state.

Chapter 3 of this report deals with the specific criteria and principles summarized above.



CHAPTER



PROCEEDINGS TO DATE AND FUTURE PROCEEDINGS

This chapter summarizes the formal activities that have occurred to date with regard to the pending petition for consolidation of the City of Fairbanks and the FNSB. Information about future proceedings concerning this matter is also provided.

A. Group Formed to Propose Consolidation

In April 1998, a group of Fairbanks citizens formed a committee to explore options for improving the structure for local government in Fairbanks. The group considered a variety of options before settling on consolidation. After drafting the petition, the group began to collect signatures in October of 1998.

B. Consolidation Petition Accepted for Filing

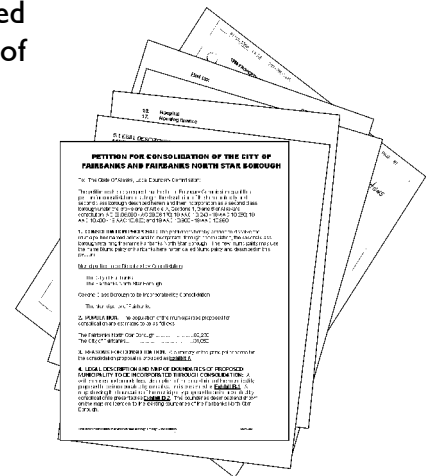
The Petition was submitted to DCED on March 20, 2000. On March 21, DCED forwarded the 539-page portion of the Petition containing signatures to the Division of Elections in the Office of the Lieutenant Governor. DCED asked the Division of Elections to review the signatures to determine whether the Petition was signed by at least the required minimum number of voters. In this case, DCED

determined that the law required the Petition to be signed by at least 1,159 voters holding dual citizenship in the City of Fairbanks and the Fairbanks North Star Borough. Additionally, DCED determined that the Petition had to be signed by a minimum of 2,564 voters of the Fairbanks North Star Borough who lived outside the City of Fairbanks.

The review of the Petition signatures was completed by the Division of Elections on May 11, 2000.

The Division of Elections determined that the Petition had been signed by:

- 1,416 qualified signers registered in the City of Fairbanks;
- 2,626 qualified signers registered in the Fairbanks North Star Borough;





- 186 duplicate signers;
- 57 signers registered outside of both jurisdictions;
- 42 signers with inactive registrations;
- 250 signers who were not registered; and
- 377 signers who were unidentifiable.

On May 17, 2000, DCED completed its technical review of the form and content of the Petition. DCED considered certain elements of the petition such as the budget and brief to lack detail. Additionally, the budget was 17 months old. DCED conferred with Chairman of the Local Boundary Commission and the Attorney General's Office regarding the form and content of the Petition.

It was agreed that a liberal construction of the form and content requirements is appropriate when citizens are exercising their right to petition the Local Boundary Commission. This approach is consistent with the general rule of liberal construction given to matters of initiative and referendum when citizens are exercising a power reserved to them under the constitution or in statute. See *Boucher v. Engstrom*, 528 P.2d 456 (Alaska 1974); *Municipality of Anchorage v. Frohne*, 568 P.2d 3 (Alaska 1977); and *Meiners v. Bering Strait School District*, 687 P.2d 287 (Alaska 1984).

Accordingly, DCED determined that the Petition was substantially complete and in proper format. The Petition was accepted for filing on May 17, 2000.

C. LBC Commissioner Lynch Recused from Proceedings

Before the Petition was accepted for filing, Ardith Lynch, who is both a member of the LBC and the FNSB Attorney, notified the LBC

Chairman that provisions of the State Executive Branch Ethics Act (AS 39.52.110 - .190) and LBC Bylaws [Article IX, Section (b)] would seem to prohibit her from participating as a member of the Commission in deliberations on the Fairbanks consolidation proposal.

On April 28, 2000, Commissioner Lynch was recused by the Commission from participating as a member of the LBC in the proceedings relating to the Fairbanks consolidation proposal.

D. Public Notice of Filing of the Petition

The LBC Chairman set August 1, 2000 as the deadline for filing responsive briefs and comments concerning the Fairbanks consolidation proposal. Public notice of the filing of the petition was published by DCED on the State of Alaska "Online Public Notices" web page continuously from May 24, 2000, through August 1, 2000.

The notice was also provided on the LBC Internet website. Additionally, the notice of filing was published by the Petitioners in the *Fairbanks Daily News Miner*, a newspaper of general circulation in the Borough, on May 19, 26, and June 2, 2000.

In addition to publishing the notice, the Petitioners delivered requests for public service announcements of the filing of the Petition to the following radio stations serving the greater Fairbanks area:

Public Notice
Petition to Consolidate the City of Fairbanks
and the Fairbanks North Star Borough

Voters of the Fairbanks North Star Borough and City of Fairbanks have petitioned the Alaska Local Boundary Commission (LBC) to consolidate the City of Fairbanks and Fairbanks North Star Borough. The Petition seeks to:

- dissolve the existing City of Fairbanks, a home rule city (the area in the former City of Fairbanks would become a service area in the new consolidated borough);
- dissolve the existing Fairbanks North Star Borough, a second class borough, and
- incorporate a new second class borough to be named the "Municipality of Fairbanks", with boundaries identical to those of the current Fairbanks North Star Borough.

The complete petition is available for public review at the Noel Wien Public Library, 1215 Cowles Street, Fairbanks. The Library's current hours are: Mon - Thurs: 10 am to 3 pm; Fri: 10 am to 6 pm; Sat: 10 am to 5 pm; and Sun 1 pm to 5 pm. The Library will be closed Sundays from Memorial Day through Labor Day. An abridged version of the Petition (excluding large maps and publications readily available in Fairbanks) is available for review on the Internet at: http://www.dced.state.ak.us/mra/mrad_lbc.htm

Responsive briefs supporting or opposing the consolidation proposal may be filed in accordance with 3 AAC 110.480. Informal written comments on the petition are also welcome. The legal criteria governing consolidation are found in AS 29.06.130, AS 29.05.031, 3 AAC 110.240 - 3 AAC 110.250, 3 AAC 110.045 - 3 AAC 110.060, and Article X, §§ 1, 3 and 5 of Alaska's Constitution. Procedures for consolidation are set out in AS 29.06.080 - 29.06.170 and 3 AAC 110.400 - 3 AAC 110.990. Those laws are available for review with the petition materials at the Noel Wien Public Library. Information about the standards and procedures for consolidation is also available on the Internet site listed above.

Responsive briefs filed under 3 AAC 110.480 and informal written comments supporting or opposing the petition must be received at the following address by **5:00 p.m., August 1, 2000**: LBC Staff, 550 West 7th Avenue, Suite 1790; Anchorage, AK 99501-3510. A copy of responsive briefs must also be provided to Don Lowell, Petitioner Representative at the address listed in the Petition. Materials may also be submitted by fax (907-269-4539) or by e-mail (Don.Lowell@lbc.state.ak.us). Inquiries concerning this matter may also be directed to LBC Staff at 907-269-4559.



1. KAKQ-FM;
2. KCBF-AM & KXLR-FM;
3. KIAK-AM & FM;
4. KJMP-AM; and
5. KFAR-AM & KWLF-FM.

Notice of the filing of the Fairbanks consolidation petition was also posted by the Petitioners in the following locations within the FNSB on May 18, 2000:

1. Noel Wien Public Library;
2. Office of the Fairbanks City Clerk;
3. Office of the Fairbanks North Star Borough Clerk;
4. Office of the North Pole City Clerk;
5. State Office Building in Fairbanks; and
6. State Court Building in Fairbanks.

On May 23, 2000, notice was also posted at the Post Office located in downtown Fairbanks.

In addition to publishing and posting the notice, the Petitioners delivered a copy of the notice to the following parties on May 18, 2000:

1. City of Fairbanks Mayor;
2. Fairbanks North Star Borough Mayor;
3. City of North Pole Mayor;
4. Denali Borough Mayor;
5. Alaska Public Employees Association in Fairbanks;
6. Education Support Staff Association in Fairbanks;
7. IBEW Local 1547;
8. Laborers Union, Local 942;
9. NEA Alaska in Fairbanks;
10. Operating Engineers, Local 302;
11. Teamsters Union, Local 959;
12. Alaska Independent Carpenters/Millrights, Local #1; and
13. International Fire Fighters, Local 1324.

On May 18, 2000, the Petitioners mailed a copy of the Petition to the Mayors of the Fairbanks North Star Borough, the City of Fairbanks, the City of North Pole, and the Denali Borough as required by law. On May 25, 2000, DCED provided notice of the filing to 51 agencies and individuals.

E. Request for Extension of Comment Period

On June 6, 2000, the Mayor of the FNSB requested that the Local Boundary Commission Chairman extend the deadline for responsive briefs and public comment. As stated previously, August 1, 2000, had been set by the Commission Chairman as the deadline for briefs and comments. The Borough requested that the deadline be extended to December 1, 2000. Its reasons for the request centered around the uncertainty stemming from the statewide initiative to limit a municipal property tax to 10 mills to be put before the voters on November 7, 2000. The Borough expressed the concern that it would be unable to provide informed comment on the consolidation proposal until the 10 mill tax cap initiative was decided.

On June 8, 2000, the Petitioners objected to the requested extension stating:

1. the Petitioners had already agreed to an extended time for responsive briefs;
2. posting, publishing, and distribution of the Petition had been completed or was under way;
3. that a 135-day extension of the already approved 74-day opportunity to file responsive briefs and comments was not timely;
4. that the tax cap initiative would not be a factor unless and until the voters approved it;



5. that if the cap is approved, litigation is likely to result which would extend the period of uncertainty over the matter well beyond the November 7 election;
6. any concerns by the municipalities regarding the cap could be brought before the Commission during the public hearing process; and
7. the normal procedures allow ample time for interested parties to voice their concerns.

On June 16, 2000, the City of Fairbanks wrote to the Commission expressing its support for the FNSB's request for the extension.

Although the Commission Chairman has responsibility for determining the schedule of proceedings, he brought the request for the extension of the deadline for filing responsive briefs to the Commission on June 27, 2000. During the meeting, four members of the Commission (Commissioner Lynch did not participate in the deliberations because of her recusal) addressed the matter. Ultimately, the Commission Chairman decided not to grant the FNSB's request to extend the deadline for comments. He did so without objection from the other three participating members of the Commission. The Chairman noted, however, that if the tax cap were approved by the voters, it would have significant implications for the consolidation proposal.

F. Comments and Responsive Briefs Filed

As noted previously, two letters and three responsive briefs were filed with the LBC by the August 1, 2000 deadline for such set by the Local Boundary Commission Chairman. The letters were submitted by:

1. Bonnie Williams who wrote a 6-page letter in opposition to the consolidation; and

2. James Moody who wrote a 4-page letter in opposition to the consolidation.

The responsive briefs in opposition to the consolidation were filed by:

1. Fairbanks North Star Borough;
2. City of Fairbanks; and
3. Interior Taxpayers' Association, Incorporated.

On August 4, DCED informed the Petitioners that in accordance with 3 AAC 110.640, the Commission Chairman had set August 29, 2000, as the deadline for filing the Petitioners' reply brief. DCED also stated that in accordance with 3 AAC 110.460, a copy of all the above noted comments and briefs must be made available for public review at the Noel Wien Library at the earliest opportunity.

DCED received the Petitioners' reply brief on August 25, 2000.

G. Preliminary Report

In accordance with 3 AAC 110.530, DCED prepared this preliminary report and provided copies to the Petitioners and respondents. Additionally, DCED has distributed the report to other interested individuals and organizations, including the correspondents in this matter.

3 AAC 110.640 requires that at least 28 days be allowed for comment on the draft report from the date the report was mailed to the Petitioners and respondents. The deadline for receipt of written comments on the draft report in this case has been set for 5:00 p.m., January 31, 2001. Comments may be submitted by mail, courier, facsimile, or e-mail. **To be considered, comments must be received by the January 31, 2001 deadline at the following location:**



LBC Staff
Department of Community and Economic
Development
550 W. 7th Avenue, Suite 1770
Anchorage, AK 99501-3510

Facsimile: (907) 269-4539
e-mail: Dan_Bockhorst@dcled.state.ak.us

which each witness will testify, and the estimated time anticipated for the testimony of each witness. The Petitioners must provide a copy of their witness list to each respondent by hand delivery or postage prepaid mail on the same date that the Petitioners submit their list to DCED. On the same date that a respondent submits its witness list to DCED, the respondent must provide a copy of its witness list to the Petitioners and all other respondents by hand delivery or postage prepaid mail.

H. Final Report

After DCED has considered the written comments on its preliminary report, it will issue a final report on the matter. The final report must be distributed to the Petitioners and respondents at least three weeks prior to the Commission's hearing on the proposal.

I. Pre-Hearing Requirements

As is described in the Section J, the Petitioners and respondents will be allowed to present sworn testimony during a public hearing on the consolidation proposal to be conducted by the Local Boundary Commission in Fairbanks. Witnesses providing sworn testimony must have expertise in matters relevant to the pending consolidation proposal.

Because there are multiple respondents in this proceeding, those respondents are encouraged to confer among themselves to determine whether they can present joint witnesses during the hearing to avoid repetitious testimony.

At least 14 days prior to the hearing, the Petitioners and each respondent must submit to DCED a list of witnesses that each respective party intends to call to provide sworn testimony. The list must include the name and qualifications of each witness, the subjects about

J. LBC Public Hearing

The Local Boundary Commission will conduct at least one public hearing on the consolidation proposal in Fairbanks. No hearing has yet been scheduled. Formal notice of the hearing will be published at least three times, with the initial publication occurring at least 30 days prior to the hearing. Public notice of the hearing will also be posted in prominent locations and will be mailed to the Petitioners and respondents as required by law.

The hearing will begin with a brief summary by DCED staff of its conclusions and recommendations concerning the pending proposal.

Following DCED's summary, the law allows the Petitioners to make an opening statement in support of the Petition. The Petitioners' opening statement is limited to ten minutes.

Although the law makes no provision for an opening statement by respondents, the Commission invariably exercises its discretion to extend such courtesy to respondents. Because there are three respondents in this proceeding, they will each have the option to make a separate opening statement (limited to three minutes each). Alternatively, they may pool their allotted time with one or both of the other respondents to make a joint opening statement.



No brief or other written materials may be filed at the time of the public hearing unless the Commission determines that good cause exists for that evidence not being presented in a timely manner for consideration by the Petitioners, all respondents, and DCED.

Following the opening statements, the Commission will receive sworn testimony whether the pending consolidation proposal meets the legal standards for consolidation and whether the petition should be granted.

The testimony phase of the hearing begins with sworn witnesses providing testimony on behalf of the Petitioners. Each respondent will then have the opportunity to provide sworn testimony of witnesses. The three respondents are encouraged to pool their witnesses to avoid redundant testimony. The LBC Chairman will regulate the time and content of testimony to exclude irrelevant or repetitious testimony.

Because the Petitioners bear the burden of proving that their petition merits approval, the Petitioners will have the opportunity to provide sworn responsive testimony in rebuttal to the testimony of the respondents. Again, the Petitioners' witnesses must have expertise in matters relevant to the proposed consolidation.

The laws governing the Commission's hearing make no provision for cross-examination of witnesses by the other parties. However, a member of the Commission may question any person appearing as a sworn witness. The Commission may also call additional witnesses.

Upon conclusion of the testimony, the Commission will receive public comment by any interested person, not to exceed three minutes for each person. A member of the Commission may question persons appearing for public comment.

Following the period of public comment, the Petitioners are allowed to make a closing statement not to exceed ten minutes. That is followed by a closing statement from the respondents. Here again, the respondents will each be given the option of making a separate closing statement (limited to three minutes each) or pooling their allotted time with one or both of the other respondents to make a joint closing statement.

Again, because the Petitioners bear the burden of demonstrating that their petition should be granted, they are allowed to make a five-minute reply to the closing statements of the respondents.

The draft hearing agenda is shown on the following page.

In compliance with Title II of the Americans with Disabilities Act of 1990, DCED will make available reasonable auxiliary aids, services, and/or special modifications to individuals with disabilities who need such accommodations to participate at the hearing on this matter. Persons needing such accommodations should contact DCED's staff to the Commission at 269-4560 at least one week prior to the hearing to make necessary arrangements.

If anyone attending the hearing does not have a fluent understanding of English, the LBC will allow time for translation. Unless other arrangements are made before the hearing, the individual requiring assistance must arrange for a translator. Upon request, and if local facilities permit, arrangements can be made to connect other sites to the hearing by teleconference.

K. LBC Decisional Meeting

If the Commission determines that it has sufficient information to judge the merits of the

**Members**

Kevin Waring
Chairperson
At-Large

Kathleen Wasserman
Vice-Chairperson
First Judicial District

Nancy Galstad
Member
Second Judicial District

Allan Tesche
Member
Third Judicial District

Arndt Lynch
Member
Fourth Judicial District



Agenda

Public Hearing - Fairbanks Consolidation Petition

1. Summary of DCED's conclusions & recommendations
2. Petitioners' opening statement (limited to 10 minutes)
3. Respondents' opening statement(s) (if respondents make separate opening statements, they are limited to 3 minutes each; however, they may pool their allotted times)
 - A. Fairbanks North Star Borough
 - B. City of Fairbanks
 - C. Interior Taxpayers' Association, Inc.
4. Sworn testimony of witnesses with relevant expertise called by the Petitioners
5. Sworn testimony of witnesses with relevant expertise called by the respondents (respondents are encouraged to pool witnesses to avoid redundant testimony)
 - A. Fairbanks North Star Borough
 - B. City of Fairbanks
 - C. Interior Taxpayers' Association, Inc.
6. Sworn responsive testimony of witnesses called by the Petitioners
7. Period of public comment by interested persons (limited to 3 minutes per person)
8. Petitioners' closing statement (limited to 10 minutes)
9. Respondents' closing statement(s) (if respondents make separate closing statements, they are limited to 3 minutes each; however, they may pool their allotted times)
 - A. Fairbanks North Star Borough
 - B. City of Fairbanks
 - C. Interior Taxpayers' Association, Inc.
10. Petitioners' Reply (limited to 5 minutes)

proposal following the hearing, the LBC may convene a decisional session immediately upon conclusion of the hearing. During the decisional session, no new evidence, testimony or briefing may be submitted. However, the LBC may ask its staff or another person for a point of information or clarification.

After the Commission has rendered a decision, it will adopt a written statement explaining all major considerations leading to its decision concerning the Fairbanks consolidation petition. A copy of the statement will be provided to the Petitioners, respondents, and all others who request a copy.

L. Reconsideration

Any interested person or organization may ask the LBC to reconsider its decision in this matter. A request for reconsideration may be

filed within 20 days after the written decisional statement is mailed to the Petitioners and respondents.

A reconsideration request must describe in detail the facts and analyses that support the request for reconsideration. Typically, the LBC will reconsider a decision only if

(1) there was a substantial procedural error in the original proceeding;

(2) the original vote was based on fraud, misrepresentation, or material error of fact or law; or

(3) new evidence not available at the time of the hearing relating to a matter of significant public policy has become known.

If the Commission takes no action on a request for reconsideration within 30 days after the decisional statement is mailed to the Petitioners and respondents, the request is automatically denied. If the Commission grants a request for reconsideration, the Petitioners and respondents opposing reconsideration may file responsive briefs for consideration by the Commission. Ten days are allotted for the filing of such briefs.

M. Election

If the Commission approves the petition for consolidation of local governments in Fairbanks, the Director of the Division of Elections for the State of Alaska will be notified in accordance with AS 29.06.140. The Director of the Division of Elections must then order a consolidation election within 30 days of the notice. The election will be conducted not less than 30 or more than 90 days after the election order.

If voters approve the proposition for consolidation, the Director of the Division of



Elections must then conduct a subsequent election for the initial officials of the consolidated borough. Although the Petitioners contemplate the election of new assembly members and new school board members, DCED believes that the existing school board could be retained in this instance. After conferring informally with the State Attorney General's Office concerning the requirements of AS 29.06.140(c), DCED maintains that absent a change in the composition, form of representation, or responsibilities of the school board; and absent a formal school board policy opposing consolidation, it would be acceptable to limit the election of new officials to the assembly.

The Federal Voting Rights Act (43 U.S.C. 1973) applies to municipal consolidations and other municipal boundary changes in Alaska. The Voting Rights Act forbids any change affecting voting rights which has the purpose or effect of

denying or abridging the right to vote for racial reasons. If the consolidation proposal is approved by the LBC, the U.S. Department of Justice or U.S. District Court in Washington D.C. must review the consolidation proposal, method of the consolidation election, and the proposed date for the consolidation election. The review typically takes about 65-70 days.

N. Judicial Appeal

A decision of the LBC may be appealed to Superior Court. The appeal must be made within 30 days after the last day on which reconsideration may be ordered by the Commission. (Alaska Rules of Appellate Procedure, Rule 601 et seq.)



CHAPTER



EVALUATION OF THE FAIRBANKS CONSOLIDATION PROPOSAL

As noted in Chapter 1, the LBC *may* approve the Petition *if* it determines that the consolidation proposal, with or without amendments and conditions:

- A. meets applicable standards under Alaska's Constitution,
- B. meets applicable standards under LBC regulations (3 AAC 110.250, and 3 AAC 110.045 – 3 AAC 110.060),
- C. meets standards for consolidation under AS 29.06.130(a) which, in this case, consist of the standards for borough incorporation under AS 29.05.031, *and*
- D. is in the best interests of the state.

This chapter provides DCED's analysis of the extent to which the Fairbanks consolidation proposal meets those four criteria.

Part A. Whether the Consolidation Proposal Meets Applicable Standards Under Alaska's Constitution

Article X, Sections 1, and 5 of Alaska's Constitution contain provisions that are particularly applicable to the pending consolidation proposal. Those provisions are addressed in this part of the report:

1. Article X, Section 1 of Alaska's Constitution – Purpose and Construction of the Local Government Article.

The first Section of Article X sets out the purpose and construction of the Local Government Article of Alaska's Constitution as follows:

The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions. A liberal construction shall be given to the powers of local government units.



Two clauses of Article X, Section 1 are particularly pertinent to the proposed consolidation. Those are the “maximum local self-government” clause and the “minimum of local government units clause”. Those two fundamental principles of Article X, Section 1 are addressed below.

a. Maximum Local Self-Government.

(1) Views of the Parties

The Petitioners assert in general terms that the principle of maximum local self-government is served by the instant consolidation proposal. For example, the Petitioners state that, “Consolidation will promote maximum local self-government with a minimum of local governmental units.” *Petition*, Ex. H, p. 2. They also state that “The proposed second class status of the consolidated municipality will meet the constitutional intent by maintaining local self-government while reducing the number of local government units.” *Petition*, Ex. A, p. 1.

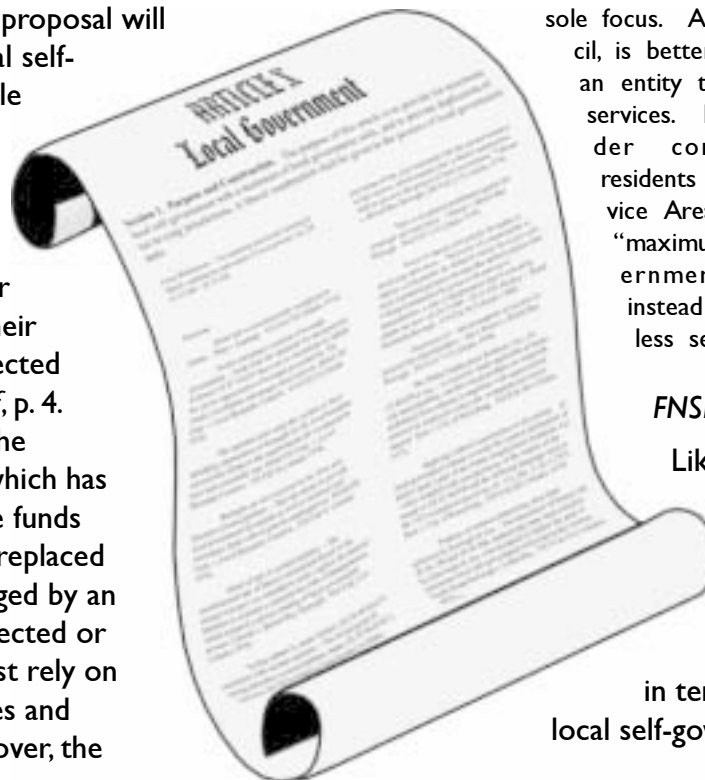
The FNSB takes the opposite view, arguing that the instant consolidation proposal will “significantly reduce” local self-government for the people presently within the City of Fairbanks. The Borough notes in this regard that “City residents would lose their home rule powers and their direct contact with an elected City Council.” *FNSB Brief*, p. 4. The FNSB stresses that the Fairbanks City Council, which has the power to appropriate funds and levy taxes, would be replaced with a service area managed by an administrator or by an elected or appointed board that must rely on the Assembly to levy taxes and appropriate funds. Moreover, the

Borough maintains that instead of being able to voice concerns to one body (currently the City Council), residents of the proposed Urban Service Area would have to deal with two, the service area administrator or board and the Borough Assembly. The Borough stresses that the Assembly, with areawide responsibilities, is less suited than the City Council to address many of the particular local government needs of the citizens of the City of Fairbanks:

The Borough Assembly has the concerns of 83,000 residents to consider; the majority of whom do not reside in the proposed Urban Service Area and do not have the services provided by that service area; for example, many Borough residents do not have public road maintenance and some do not have fire protection. The Borough Assembly has a full agenda dealing with the issues that concern all Borough residents, such as rezones and other land use issues, school construction, education funding, and other Borough services. Although there is no doubt that the Borough Assembly would do its best to listen to the needs and desires of the Urban Service Area, the practical reality is that it would not and could not be their sole focus. A city, with a council, is better suited to govern an entity that provides many services. It is clear that under consolidation, the residents of the Urban Service Area would not have “maximum local self-government” but would instead have considerably less self-government.

FNSB Brief, p. 8.

Like the FNSB, the City takes the view that the instant consolidation proposal will be “a step backward” in terms of maximum local self-government. The City





bases its position largely on the fact consolidation will eliminate home rule for those governed by the City of Fairbanks. *City Brief*, pp. 1, 3. The City also notes that the Constitutional Convention delegates rejected a proposal to eliminate all city governments, leaving boroughs as the only form of municipal government in Alaska. *Ibid.*, p. 14.

The Petitioners respond to the views of the critics that consolidation will diminish local self-government by asserting that the City presently lacks “administrative depth.” Petitioners maintain that consolidation will address the perceived deficiency by promoting “effectiveness and efficiency.” *Reply Brief*, Sec. I, p. 1.

Regarding the argument that replacing the City government with a service area in and of itself diminishes local self-government, the Petitioners state:

City residents are also Borough residents; they elect Borough officials now and after consolidation. This is self-government improved by consolidation eliminating the cost of City residents supporting two local governments. Unification in Anchorage did not diminish the level of self-government for former city residents.

Ibid., p. 1.

AT A GLANCE

DCED'S VIEWS CONCERNING MAXIMUM LOCAL SELF-GOVERNMENT

“Maximum local self-government” under Alaska’s Constitution is achieved first and foremost through the extension of any municipal government – city or organized borough – to unincorporated areas. The fact that the Fairbanks City Council might be replaced by a service area administrator or board that must rely on the assembly of the consolidated borough to appropriate funds and levy taxes does not, in and of itself, diminish local self-government. Such effects are typical of municipal unification or city/borough consolidation in Alaska.

The loss of home rule status would be, theoretically, some diminution of maximum local self-government with respect to matters governed by the City of Fairbanks. However, any diminution would be more academic than tangible. Six prominent factors would significantly limit the practical effects of any diminution. Among them is the fact that Alaska’s judiciary and legislature have, to a large extent, equalized the capacity of home rule and general law municipalities to exercise powers. Further, the loss of home rule status in this instance would be ephemeral – that is, a reversion to general law status is not a permanent condition – citizens of the proposed new borough could readily choose to extend home rule to the entire borough. As such, any decrease in maximum local self-government that would result from the instant consolidation proposal is largely academic and should not preclude consolidation.

(2) DCED’s Analysis

To gain a proper understanding of the maximum local self-government clause, it is appropriate to reflect on the circumstances prevalent in Alaska at the time that the Constitution was written. There was a strong need and desire for self-government in terms of Alaska’s affairs in general. Victor Fischer, delegate to Alaska’s Constitutional Convention and Secretary to the Convention’s Committee on Local Government, noted:

Alaskans had, at the time the constitution was being written, only such rights and privileges as were constitutionally granted to all citizens of the United States and as provided by the U.S. Congress for the Territory. Federal law thus served as Alaska’s constitution prior to statehood. In some cases, Congress specified what rights and rules



would apply to Alaska; in others, it permitted the territorial legislature to act (or prohibited it from acting).

One of the basic arguments for statehood was this lack of self determination and self governance under the federal administration. .

Victor Fischer, *Alaska's Constitutional Convention*, 1975, p. 69. ("Fischer I")

It is also appropriate to address the state of affairs with respect to local government in Alaska during the mid-1950s. Again, Vic Fischer has provided a useful characterization of those circumstances forty-five years ago:

Under territorial status, local institutions had undergone only limited development; there was little self-determination at the territorial and even less at the local level. Federal law prescribed the powers of the territorial legislature, severely limiting the scope and types of local government and restricting the powers that could be exercised by cities. For example, counties could not be established, bonding criteria were strictly delimited, and home rule could not be extended to cities.

Ibid., p. 116.

When Alaska's Constitutional Convention convened, Alaska had just thirty city governments and approximately fifteen independent school districts and public utility districts. All of those local governments were community-based entities; Alaska lacked regional governments. Mr. Fischer stated the following with regard to the views of the Committee on Local Government concerning maximum local self-government:

Since there were no direct precedents, the committee decided that the local government article should consist of general statements and policy, rather than detailed prescriptions and criteria. The first draft article presented to the convention stated *the general purpose was to provide a maximum of self-government to the people in all parts of Alaska. To meet this goal, two basic local government units were established – boroughs and cities.* (emphasis added) This framework was designed to accommodate today's needs and tomorrow's growth and development. The committee then set forth the principles underlying the proposed local government system:

- I. Self-Government. The proposed article bridges the gap now existing in many parts of Alaska. It opens the way to democratic self-government for people now ruled directly from the capital of the territory or even Washington, D.C. The proposed article allows some degree of self-determination in local affairs whether in urban or sparsely populated areas. The highest form of self-government is exercised under home rule charters which cities and first class boroughs could secure.

Ibid., p. 117.

DCED also considers it relevant to the issue of maximum local self-government that the Alaska Supreme Court has held that Article X, Section 1 of Alaska's Constitution encourages the creation of borough governments.⁷ *Mobil Oil Company v. Local Boundary Commission*, 518 P.2d 92, 101 (Alaska 1974). Moreover, the Court reads Article X, Section 1 "to favor upholding organization of boroughs by the Local Boundary Commission whenever the requirements for incorporation have been minimally met." *Ibid.*, p. 99.

⁷ Although not stated, it seems reasonable to conclude that the Court's determination that Article X, Section 1 encourages the creation of boroughs reflects both the maximum local self-government clause and the minimum of local government units clause found in Section 1.



From the foregoing – particularly the view of the Committee on Local Government that boroughs and cities were established to ‘meet the goal of providing a maximum of self-government to the people in all parts of Alaska’ – DCED concludes that maximum local self-government is achieved first and foremost through the extension of city or borough government to a previously unincorporated area.

Thus, residents of the City of Fairbanks already had a structure in place at the time of statehood that served the constitutional principle of maximum local self-government. Five years after Alaska became a state, the FNSB was incorporated pursuant to Chapter 52, *Session Laws of Alaska 1963* (commonly known as the 1963 Mandatory Borough Act). That law mandated the creation of certain boroughs, in part, to provide for maximum local self-government. (Section 1 of the 1963 Mandatory Borough Act expressly stated, “It is the intention of the legislature to provide for maximum local self-government . . .”) Thus, in 1964, overlapping structures for maximum local self-government were established in the area encompassing the City of Fairbanks (and the City of North Pole), while a single structure for maximum local self-government was established in the remainder of the Borough.

As noted, the Constitutional Convention’s Committee on Local Government took the view that “The highest form of self-government is exercised under home rule.” DCED accepts that premise generally, but acknowledges that it is theoretically possible to devise a charter that many might judge to be extremely limited self-government. For example, a borough charter could provide that the borough shall exercise



The Local Government Committee of the Alaska Constitutional Convention, February 1956.

only the powers mandated by State law unless other powers are authorized by a super majority of the voters.

The City of Fairbanks attained home rule status when voters adopted a charter at an election conducted November 22, 1960. Since the pending consolidation proposal would dissolve the home rule City of Fairbanks and create in its place a new borough service area within a new second class (general law) borough, consolidation would theoretically seem to be some diminution of maximum local self-government.

However, to end the analysis there would be an unduly superficial treatment of the important issue of maximum local self-government. There are many factors that lessen the tangible effects of any diminution of local self-government that would result from the loss of home rule status. These include:

- (a) interpretations by Alaska’s judiciary limiting municipal home rule authority;
- (b) legislative enactments imposing limitations on municipal home rule authority;



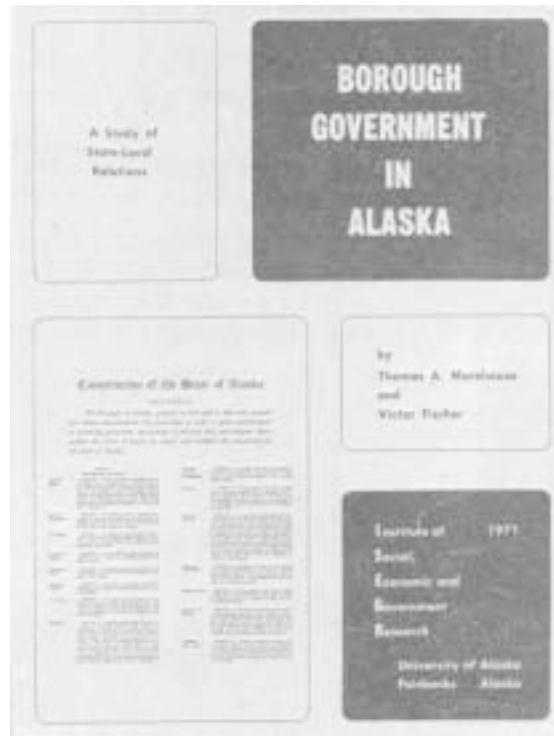
- (c) judicial and legislative actions empowering general law municipal governments;
- (d) the nature of the particular municipal governments currently serving the territory in question;
- (e) practical and political considerations concerning the particular consolidation proposal; and
- (f) the ephemeral nature of the loss of home rule status in the case at hand.

These factors are addressed below.

(a) Interpretations by Alaska's Judiciary Limiting Home Rule Authority.

Vic Fischer expressed the following views concerning the intent of the Constitutional Convention's Committee on Local Government regarding municipal home rule authority:

Believing that local governments should have freedom to perform what functions they desired and to design their own administrative organization, the committee rejected the home rule approaches of other states that enumerated specific powers or which made a vague grant of local government powers. It, therefore, also rejected suggestions of the National Municipal League's Model State Constitution, which included a general grant of home rule authority, a list of major powers, and a statement to the effect that the enumeration of powers should not be deemed to restrict the general grant.⁸ Instead, it chose to devise its own home rule clause: "A home rule borough or city may exercise all legislative powers not prohibited by law



or by charter.”⁹ The intent of this provision was expressed by the Local Government Committee:

The grant of powers is to be based upon “legislative powers” rather than a specific enumeration. Enumerations have frequently been restrictively interpreted by the courts. Nor was it felt desirable that the grant be on the basis of powers covering “local affairs” or “local government.” Such terms have also given rise to continuous judicial interpretation, causing great uncertainty in what the actual powers of local government are. The grant of “legislative” power would be subject to restrictions contained in the constitution,

⁸ (Footnote original) National Municipal League, *Model State Constitution*, 1955, Section 804.

⁹ (Footnote original) Constitution, Article X Section 11. This approach is similar to the type of home rule that evolved in Texas after many years of judicial interpretation and abandonment of the doctrine that the Texas home rule amendment granted only “local government powers.” See John P. Keith, *City and County Home Rule in Texas*, Institute of Public Affairs, University of Texas, 1951. Keith’s study was used by the committee in developing the Alaska approach. For a recent review of home rule in Alaska, including its constitutional background and intent, see Gerald R. Sharp, “Home Rule in Alaska: A Clash Between the Constitution



to powers specifically withheld by the legislature, and to powers withheld by the people in the adoption of their local charters.¹⁰

“Legislative powers,” as used here, meant that a home rule government might exercise the same powers available to the state legislature.¹¹ However, the committee recognized that home rule could not be absolute. Delegates believed that the legislature should have the authority to deny local exercise of specific powers when necessary in behalf of an overriding state interest or to resolve conflicts of authority between home rule cities and home rule boroughs.

Fischer I, *supra*, pp. 125-126. The Sharp law review article¹² on home rule municipal authority in Alaska that was cited by Mr. Fischer, by the Alaska Supreme Court in *Jefferson v. State*, 527 P.2d 37, at 42, 43 (AK 1974), and by Alaska Court of Appeals Justice James Singleton in his dissenting opinion in *Anderson v. Municipality of Anchorage*, 645 P.2d 205 at 215-216 (AK App 1982), indicates that Alaska’s Supreme Court has interpreted home rule authority in markedly different fashions at various intervals since Alaska achieved statehood:

In the ten years that followed statehood the court refrained from seeking guidance from other states in the interpretation of its home rule grant, and in the *Lien*, *Maier* and *Rubey*¹³ decisions displayed an understanding of the intent of the constitutional provision. These three decisions set a pattern of broad, constitutionally based home rule power and a liberal judicial construction of home rule powers.

Sharp, *Home Rule in Alaska: A Clash Between the Constitution and the Court*; 3 U.C.L.A. – Alaska L.R. 1, 53 (1973). However, in 1970, Alaska’s Supreme Court handed down the first of two decisions which Mr. Sharp severely criticized as a reversal of the prior patterns of judicial interpretations of broad, constitutionally based home rule powers and of a liberal judicial construction of home rule powers.

. . . in *Chugach*¹⁴, a case which followed a substantial change in court personnel, the court reversed both patterns. It adopted the state-local test, which it denominated the “local activities rule,” with the result that where any statewide interest is at stake a state statute which is inconsistent with an ordinance of a home rule municipality will constitute a prohibition.

10 (Footnote original) *Minutes*, 24th Meeting.

11 (Footnote original) Thus, the Local Government Committee deemed it possible that resources development could be a function of Alaska local government, even though such a power would not come under the traditional concept of what is “local” or be included in the usual enumeration of local powers.

12 Cited *infra* and in footnote 9, *supra*.

13 (Footnote added by DCED) *Lien v. City of Ketchikan*, 383 P.2d 721 (Alaska 1963); *Maier v. City of Ketchikan*, 403 P.2d 34 (Alaska 1965); and *Rubey v. City of Fairbanks*, 456 P.2d 470 (Alaska 1969).

14 (Footnote added by DCED) *Chugach Electric Association v. City of Anchorage*, 476 P.2d 115 (Alaska 1970).



The court in adopting the rule which the framers of the constitution had rejected justified itself on the simplistic bandwagon approach to judicial interpretation – the “current trend of authority.” To compound its error the court even cited as examples of the rule decisions from a state which had been pointed out to the committee and convention as an example of what to avoid.

The court reaffirmed its retreat from the constitution in *Macauley*¹⁵ when it clearly limited the meaning of local activities to *purely* local activities. Purely local activities, i.e., those not touched by *any* state interest, are extremely limited, if, indeed, any exist at all. But the court, in a burst of inane generosity, conceded recognition of broad home rule governmental powers in matters of purely local concerns. The result is that now a home rule municipality in Alaska may act in areas of mixed state and local concern so long as its acts are not inconsistent with state statutes. If it can find an area of *purely* local concern it may exercise its broad governmental powers by acting in conflict with those statutes which are not intended to apply to home rule municipalities.

Home rule in Alaska as construed by the court is hardly worthy of the name. Of those states which purport to have constitutional home rule, Alaska must be placed among the weakest. The court’s violation of clear constitutional intent coupled with its manifest restrictive attitude toward local government leaves little hope that home rule in Alaska will be restored to its proper status by the court. Short of a constitutional amendment, the only solution may be restoration by the legislature.

What the framers of the constitution had though (sic) was a bold, new approach to home rule, one which created a strong and

forward looking home rule structure, the court has converted into a weak, common, regressive form of home rule plagued by all the difficult questions the framers sought to avoid in addition to questions created by the new grant. In the 49th state a mere constitution is ineffective to purge local government law of the pervasive influence of judge Dillon’s restrictive rule and transfer political decision making from the court to the legislature.

Ibid., p. 53.

In 1974, shortly after the publication of the Sharp article, the Alaska Supreme Court was again faced with a question of the scope of home rule authority. In that case, *Jefferson v. State*, *supra*, the Court did not directly overrule its prior adoption of the “local activities” rule, however, it cited the Sharp law review article and adopted the irreconcilable conflict test proposed in that article as the appropriate means to resolve alleged conflicts between municipal home rule enactments and State law. Thus, the *Jefferson* court abandoned the “local activities” rule that had led Sharp in 1973 to the conclusion that “Home rule in Alaska is hardly worthy of the name.” However, the “irreconcilable conflict” rule adopted by the Court is not without its problems as it sets a threshold which, itself, is still subject to interpretation by the courts on a case by case basis. The standards to be applied by a court to determine whether an alleged ordinance/state law conflict rises to the irreconcilable level is a matter of judicial disagreement as can be seen in Justice Singleton’s dissent in *Anderson v. Municipality of Anchorage*, *supra*, at 213-215, where he wrote:

15 (Footnote added by DCED) *Macauley v. Hildebrand*, 491 P.2d 120 (Alaska 1971).



I believe *Simpson v. Municipality of Anchorage*, 635 P.2d 1197 (Alaska App.1981), was incorrectly decided for the reasons set out in Judge Coats' dissenting opinion. I am also of the view that statutes, such as AS 28.01.010(a) which was interpreted in *Simpson*, and AS 28.35.230(c) which is interpreted in this case, must be read in the light of article X, sections 1 and 2, of the Alaska Constitution, requiring a liberal interpretation of municipal powers, and I suggest, by necessary implication, a strict construction of any statute purporting to "prohibit" the exercise of municipal power.¹⁶ These constitutional provisions have been thoroughly reviewed in V. Fischer, *Alaska's Constitutional Convention* 116-27 (1975), and Sharp, *Home Rule in Alaska: A Clash Between the Constitution and the Court*, 3 UCLA-Alaska Law Review 1 (1973). I will not repeat that review here, let it suffice to say that I agree with Sharp that,

If the grant of 'all legislative power' is to be given the meaning of its Texas predecessor, namely, legislative power as broad as that possessed by the state legislature, and if that grant is to be construed in the light of the interpretative mandate of Article X, section 1 requiring a liberal construction be given to municipal powers, one is compelled to the initial conclusion that legislative acts of a home rule municipality rise in dignity to a level close to those of the state legislature. Municipal home rule acts are inferior only in that they are subject to being prohibited by the municipality's charter and by an act of the state legislature. Accepting this

near equality of the two acts, the resolution of a conflict between the two (when the home rule municipality's act has not been clearly prohibited) is apparent: the court should resolve the conflict in the same manner it resolves a conflict between two acts of the legislature. When it is asserted that two acts of the legislature are in conflict, the question is whether there is such a conflict as will compel the court to find an implied intent on the part of the legislature to repeal the prior conflicting act. It is the duty of the court to construe statutes in a manner which will produce harmony. As repeal by implication is disfavored by the courts, only when no reasonable construction can be found which will permit both acts to stand should the court resort to implied repeal by the dominant statute. If the court were to adopt this approach, the question of the level of friction which will cause the court to invalidate a home rule enactment would be clearly established as that which exists when there is an irreconcilable conflict.

Sharp, *supra*, at 30-31 (footnotes omitted).

Thus to the extent that a municipal penalty provision must be attached to an ordinance which corresponds to a state statute to survive AS 28.35.230(c), I would define "correspond" as "be similar to" and conclude that former AMO 9.28.030 is sufficiently similar to former AS 28.35.030 to pass muster.¹⁷

16 (Footnote original) A state statute which purported to "prohibit" any municipal ordinance which was not identical to a state statute would track the language of article X, section 11, but would, if given effect, amend the constitution, drastically altering the local government provisions of article X. I do not believe that the constitutional convention intended that the legislature could "prohibit" municipal action by general enactment and yet the interpretation placed upon AS 28.01.010(a) in *Simpson* and AS 28.35.230(c) here has that effect.

17 (Footnote original) Correspond ... v. 1. to be in harmony or agreement, *this corresponds with what I've heard*. 2. to be similar or equivalent, a parliament that corresponds to our congress Oxford American Dictionary 143 (1980) (emphasis in original).



I am particularly concerned that the members of the State Constitutional Convention may have foreseen today's holding and sought (ineffectually as it turns out) to prevent it.

The provision of the Alaska Constitution establishing home rule powers is based upon a comparable provision in the Texas State Constitution. Sharp, *supra*, at 24-27. There are some differences between the two sections, however. As Sharp points out:

[A] deviation from the Texas and AMA model is the character of the legislative act which invalidates a home rule exercise of power. Under the Alaska Constitution the home rule legislative power must be *prohibited*. Under the AMA model the power must be denied. The comment explaining that provision of the AMA model states that the power exists for the home rule city 'so long as the legislature does not expressly deny it.' Under the Texas grant, home rule charters and ordinances may not contain any provision which is *inconsistent* with the constitution or general laws enacted by the legislature. The result of judicial application of this standard in Texas was discussed *supra*. The Keith book¹⁸ which was before the committee made specific reference to what its author believed was a strict interpretation given the 'no inconsistency' phrase pointing to a decision in which the Texas court had found inconsistency where the municipality had set a heavier penalty than the state for a penal code violation.

With the foregoing interpretation of the Texas experience before it, it is significant to note that not only did the committee

not propose an 'inconsistency' or 'conflict' standard but that it never used such a term in its discussion of the mechanics for limiting municipal home rule legislative powers. The idea of a specific withdrawal or prohibition indicates that the committee intended some sort of direct action which clearly recognized the home rule power being limited.

Id. at 26-27 (footnotes omitted; emphasis added). In his analysis, Sharp is referring to the following statement by Keith:

Conflict with a general law. We find that where a charter provision or ordinance conflicts with the general law the general law is supreme even though the charter provision or ordinance deals entirely with municipal affairs. A city may act for itself within the scope of its functions in any field not covered by general law, but enactment of a general law applicable to all cities of a certain class precludes any city of that class from enacting contrary legislation. In addition, a general statute expressly applicable to general law cities does not apply to home rule cities and conversely. The courts are very strict as to what constitutes a conflict between a state law and a charter provision or ordinance. For example, a municipal ordinance which for an offense contains penal provisions different from those of the state penal code is held by the courts to constitute a conflict with the state law even though the municipal penal provision imposes a stiffer penalty.

J. Keith, *supra*, at 90-91 (footnotes omitted).

18 (Footnote original) The "Keith" book referred to is J. Keith, *City and County Home Rule in Texas* (1951)



Keith cites *City of Wink v. Griffith Amusement Co.*, 129 Tex. 40, 100 S.W.2d 695, 698 (1936), and *El Paso Electric Co. v. Collins*, 23 S.W.2d 295, 296 (Tex.Civ.App.1930), for the proposition that divergence of penalty renders an ordinance “inconsistent” and thus invalid. It is ironic that our court today adopts *sub silentio* the rule of these cases – a rule which, as Sharp persuasively argues, the constitutional convention expressly rejected.¹⁹

DCED’s Conclusion Concerning Interpretations by Alaska’s Judiciary Limiting Home Rule Authority.

While Alaska’s Constitution provides the broadest home rule clause of any state, Alaska’s judiciary has not always given it the deference intended by the framers. This was particularly the case from 1970 – 1974. Although the judiciary has since returned to a more suitable course in its interpretations, constitutional scholars, including some members of the judiciary, have contemporary reservations about the deference which Alaska’s judiciary gives to home rule enactments. Those reservations are evident in Justice Singleton’s dissenting opinion in *Simpson v. Municipality of Anchorage* wherein he stated that he was “particularly concerned that the members of the State Constitutional Convention may have foreseen today’s holding and sought (ineffectually as it turns out) to prevent it.” Thus, the previously noted vision of the Constitutional Convention’s Committee on Local Government that “[t]he highest form of self-government is exercised under home rule” has not been realized to the full extent envisioned by the founders.

(b) Legislative Enactments Imposing Limitations on Municipal Home Rule Authority.

One hundred and thirty-five separate sections of State law contain provisions regarding home rule municipal governments. Many are express limitations on municipal home rule authority.

The 135 sections include provisions found in Alaska Statutes Title 9 (Code of Civil Procedure),

Title 14 (Education, Libraries, and Museums), Title 15 (Elections), Title 18 (Health, Safety, and Housing), Title 19 (Highways and Ferries), Title 21 (Insurance), Title 23 (Labor and Workers’ Compensation), Title 29 (Municipal Government), Title 30 (Navigation, Harbors, and Shipping), Title 37 (Public Finance), Title 38 (Public Land), Title 39 (Public Officers and Employees), Title 40 (Public Records and Recorders), Title 41 (Public Resources), Title 42 (Public Utilities and Carriers), Title 43 (Revenue and Taxation), Title 44 (State Government), Title 45 (Trade and Commerce) and Title 46 (Water, Air, Energy, and Environmental Conservation).

A number of the 135 individual sections noted in the preceding paragraph impose express limitations on home rule municipalities with regard to a multitude of specific sections of State law. For example, just one of the sections, AS 29.45.800, provides that “AS 29.45.010 – 29.45.560 apply to home rule and general law



¹⁹ (Footnote original) The state and local laws governing driving while intoxicated under discussion here have been substantially amended and are now virtually identical, nevertheless *Simpson* and this case speak generally to the relationship between state and local laws regulating motor vehicles. They therefore have significance far beyond drunk driving.



municipalities.” Thus, AS 29.45.800 alone imposes limitations on home rule municipalities contained in 56 different sections of the statutes. All told, there are hundreds of express limitations on home rule authority in State law.

New limitations continue to be imposed on home rule municipalities by the legislature. For example, since AS 29 underwent comprehensive revisions in 1985, sixteen additional provisions in AS 29 alone have been imposed as home rule limitations.

Concern that the State breached the constitutional intent regarding limitation of home rule municipal authority led Governor Knowles to veto House Bill 133 adopted by the legislature earlier this year. The Governor noted:

... for the first time since statehood, the rights of Alaska's home rule municipalities in forming, altering, and abolishing service areas are limited by statute.

This bill also raises serious constitutional concerns by imposing limitations on home rule boroughs and unified municipalities. Home rule municipalities have a constitutional grant of authority that gives them liberal control over matters purely of local concern. How service areas are established and governed has historically been dealt with in home rule charters as part of the organic law of a particular home rule municipality. And where a home rule municipality is concerned with a matter of purely local concern, the charter and not a legislative act is looked to in order to determine whether a particular power has been conferred upon the municipality. It would be incongruous to recognize the constitution provision that a home rule municipality “may exercise all legislative powers not prohibited by law or by charter”, and then to say that the power of a home rule city is measured by a legislative act.” *Lien v. City of Ketchikan*, 383 P.2d 721, 723 (Alaska 1963).

Letter from Governor Tony Knowles to Senate President Drue Pearce, May 19, 2000.

DCED's Conclusion Regarding Legislative Enactments Imposing Limitations on Municipal Home Rule Authority.

As noted earlier, Vic Fischer wrote that the founders “recognized that home rule could not be absolute. Delegates believed that the legislature should have the authority to deny local exercise of specific powers when necessary in behalf of an overriding state interest or to resolve conflicts of authority between home rule cities and home rule boroughs.” To the extent that the hundreds of home rule limitations in AS 29 and the many more limitations in eighteen other titles of the Alaska Statutes relate to matters beyond which there is an overriding State interest, they erode the extent to which home rule represents the highest form of local self-government.

SENATE CS FOR CS FOR HOUSE BILL NO. 133(CRA) am S

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Amended: 4/20/00

Offered: 4/18/00

Sponsor(s): REPRESENTATIVES BUNDE, Halcro

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to municipal service areas and providing for voter approval of
2 the formation, alteration, or abolishment of certain service areas."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. AS 29.10.200 is amended by adding a new paragraph to read:
5 (60) AS 29.35.450 (voter approval of alteration or abolishment of
6 service areas).

7 * Sec. 2. AS 29.35.450(a) is amended to read:

8 (a) A service area to provide special services in a borough or unified
9 municipality may be established, operated, altered, or abolished by ordinance, subject
10 to (c) of this section. Special services include services not provided by the unified
11 municipality or a higher or different level of services. Special services include
12 services not provided by a borough on an areawide or nonareawide basis in the
13 borough [,] or a higher or different level of services [SERVICE] than that provided
14 on an areawide or nonareawide basis. A [THE] borough may include a city in a

HB0133F

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New Text Underlined [DELETED TEXT BRACKETED]



(c) Judicial and Legislative Provisions Empowering General Law Municipal Governments.

It is important to recognize that the “liberal construction of local government powers” clause in Article X, Section I applies to both general law municipal governments and home rule municipal governments. In 1978, the Alaska Supreme Court ruled as follows with regard to the clause in a matter involving the Bristol Bay Borough, a second class (general law) borough like the proposed Municipality of Fairbanks:

The constitutional rule of liberal construction was intended to make explicit the framers’ intention to overrule a common law

rule of interpretation which required a narrow reading of local government powers.²⁰

Liberati v. Bristol Bay Borough, 584 P.2d 1115, 1120 (Alaska 1978).

Further, the legislature has enacted broad statutory provisions consistent with Article X, Section I concerning the construction of general law municipal powers. Those provisions state as follows:

Sec. 29.35.400. General construction. A liberal construction shall be given to all powers and functions of a municipality conferred in this title.

20 (Footnote original) The rule, called Dillon’s rule states:

[a] municipal corporation possesses and can exercise the following powers and not others. First, those granted in express words; second, those necessarily implied or necessarily incident to the powers expressly granted; third, those absolutely essential to the declared objects and purposes of the corporation – not simply convenient, but indispensable.

Merriam v. Moody’s Executors, 25 Iowa 163, 170 (1868). The minutes of the constitutional convention reveal that the liberal construction clause of Article X, Section I was intended to assure that general law municipalities, as well as those having home rule powers, would not be governed by this rule, but would have their powers liberally interpreted. The following colloquy between delegates Helleenthal and Victor Fischer is illustrative:

HELLENTHAL: Is there a compelling reason for the retention of the last sentence in the section?

V. FISCHER: Mr. President, we were advised by our committee consultants that due to the fact that in the past, courts have very frequently, or rather generally interpreted the powers of local government very strictly under something called “Dillon’s Rule”, or something like that, that a statement to this effect was rather important, particularly in connection with the local government provisions of the article to make sure that it would be interpreted to give it the maximum amount of flexibility that we desire to have in it and to provide the maximum powers to the legislature and to the local government units to carry out the intent of this article.

. . . .

HELLENTHAL: Now I refer to Section 11. Doesn’t Section 11 clearly reverse this rule that you refer to as Dillon’s Rule?

V. FISCHER: That would apply to home rule, cities and boroughs, but the point is that there may be a lot of local government units in Alaska over the years that may not be granted the home rule authority by the legislature and it may not want to adopt a home rule charter. Alaska Constitutional Convention Proceedings, Part 4, 2690 – 96.



Sec. 29.35.410. Extent of powers. Unless otherwise limited by law, a municipality has and may exercise all powers and functions necessarily or fairly implied in or incident to the purpose of all powers and functions conferred in this title.

In *Gilman v. Martin*, 662 P.2d 120, 124 (Alaska 1983), the Alaska Supreme Court addressed Article X, Section 1 along with the version of the two statutes noted above that was in effect at the time. The Court concluded that the Kenai Peninsula Borough, a second class (general law) borough like the proposed Municipality of Fairbanks, had powers beyond those expressly stated in law. More specifically, the Court concluded that even though State statutes did not specifically authorize a second class borough to dispose of land by lottery, that power was “fairly implied.”

In accordance with article X, section 1, of the Alaska Constitution, AS 29.48.310 provides that “[a] liberal construction shall be given to all powers and functions of boroughs and cities conferred in this title.” AS 29.48.320 states that “[u]nless otherwise limited by law, boroughs and cities have and may exercise all powers and functions necessary or fairly implied in or incident to the object or purpose of all powers and functions conferred in this title.” In view of the permissibility of sales of state land by lottery,²¹ we conclude that the Kenai Peninsula Borough properly exercised its “fairly implied” power to authorize the sale by lottery of its lands acquired from the state.

It is important to note also that the irreconcilable conflict rule established in *Jefferson v. State* to resolve conflicts between State statutes and home rule ordinances was also applied in *Gilman v. Martin* to resolve a conflict between a statute and an ordinance of

the general law Kenai Peninsula Borough. Specifically, the Court stated in that regard (at 124):

We further conclude that Ordinance 79-53 is not invalid even though it arguably conflicts with AS 11.60.010. As we stated in *Jefferson v. State*, 527 P.2d 37, 43 (Alaska 1974):

A municipal ordinance is not necessarily invalid in Alaska because it is inconsistent or in conflict with a state statute. The question rests on whether the exercise of authority has been prohibited to municipalities. The prohibition must be either by express terms or by implication such as where the statute and ordinance are so substantially irreconcilable that one cannot be given its substantive effect if the other is to be accorded the weight of law.

Accord City of Kodiak v. Jackson, 584 P.2d 1130, 1132 (Alaska 1978); *Johnson v. City of Fairbanks*, 583 P.2d 181, 184 (Alaska 1978); *Simpson v. Municipality of Anchorage*, 635 P.2d 1197, 1200 (Alaska App.1981). Municipalities have not been expressly prohibited from authorizing land sale lotteries and Ordinance 79-53 is not irreconcilable with AS 11.60.010; the statute only prohibits gambling not authorized by law and Ordinance 79-53 is a law authorizing land sale lotteries. We thus conclude that the Borough's land sale lottery does not violate Alaska's statute prohibiting unlawful gambling.

The court quoted the irreconcilable conflict rule and cited *Jefferson v. State* as the source without making a distinction as to the deference due to an enactment by a home rule municipality as compared to a general law municipality. The application of the irreconcilable conflict rule in *Gilman v. Martin*

21 (Footnote original) AS 38.05.057 specifically authorizes the state to dispose of land by lottery: “The commissioner may dispose of land, including land limited to use for agricultural purposes, by lottery.”



clearly enhanced the powers of general law municipalities in Alaska.

Those powers were further enhanced to a great degree in 1985 when the State legislature eliminated the enumerated list of regulatory powers of general law municipalities (former AS 29.48.035) and the enumerated list of authorized facilities and services of general law municipalities (former AS 29.48.030). The enumerated lists of powers were replaced with the broadest possible grant of powers to general law municipalities; i.e., “...any power not otherwise prohibited by law.” [AS 29.35.200(a) & (c); 210(c) & (d); 220(d); 250(a); 260(a)]

This grant has no general limitations such as ‘...any municipal power’ or ‘...any local government power’ which would imply that the granted powers were limited to those that the court might think of as typical or appropriate local government powers. Finding such an implied limitation would be difficult in light of the language of Article X, § 1, *Liberati, Martin*, and the literal language of the grant.

Similarly, it may be relevant that the second sentence of Article X, § 1 reads “*A liberal construction shall be given to the powers of local government units*” instead of, “*A liberal construction shall be given to local government powers.*” The latter implies that there is some definition or judicial understanding of what constitutes local government powers and invites a court to define what is encompassed by the term before it applies a liberal construction to the power being questioned. If it is not typically a “local government power” as envisioned by the courts across the nation, then the court need not apply a liberal construction to it. The actual language of Alaska’s

Constitution does not lend itself as easily to such an interpretation and, coupled with the language of the Title 29 grants (“any power not otherwise prohibited by law”), would make it difficult for a court (in a well briefed case) to resort to limiting Alaska municipal powers to common understandings of what powers are traditional municipal powers.

As a practical matter, under the present language of Title 29, the nature of the powers to which a general law municipality has access are substantially the same as those to which a home rule municipality has access, bearing in mind the specific Title 29 limitations that apply to general law municipalities.

Prior to the significant 1985 statutory changes, State law enumerated 24 facilities and services and twenty regulatory powers that a second class borough could exercise on a service area basis, subject to voter approval. See former AS 29.63.090, AS 29.48.030, 29.48.033, and 29.48.035. With the 1985 changes, AS 29.35.490(a) now provides that a second class borough may exercise in a service area any power not otherwise prohibited by law if the power is approved by a majority of voters in the service area or by all property owners if the service area is uninhabited.²²

DCED’s Conclusion Concerning Constitutional and Legislative Provisions Empowering General Law Municipal Governments.

While the courts and legislature have imposed restrictions on home rule municipalities which extend beyond the limits anticipated by the delegates to the State Constitutional

22 AS 29.35.490 states, “A second class borough may exercise in a service area any power granted a first class city by law . . .” AS 29.35.250 provides that “A city inside a borough may exercise any power not otherwise prohibited by law.”



Convention, the powers of general law cities and boroughs in Alaska have been enhanced by the judiciary and the legislature over the years. Today, general law municipalities can reasonably be described as having home rule-like powers, bearing in mind that AS 29 imposes more limitations on general law municipalities than it does on home rule municipalities.

(d) The Nature of Municipal Governments Currently Serving the Area in Question.

Concern over the loss of home rule status in the instant matter might be greater if citizens of the affected area were governed exclusively by home rule municipal governments.

Residents of the City of Fairbanks are, of course, governed by two municipal governments. One, the City of Fairbanks, is home rule, while the other, the FNSB, is general law. Table I on the following page lists the powers that each of the two municipal governments exercise within the 33.8 square miles encompassed by the corporate boundaries of the City of Fairbanks.

Table I shows that both types of governments – general law and home rule – provide essential services to the residents of the City of Fairbanks. The services offered by the City of Fairbanks are typical of those offered by any number of general law municipal governments in Alaska. A second class borough is capable of providing all services currently provided by the City of Fairbanks on a service area basis.

DCED's Conclusion Regarding the Nature of Municipal Governments Currently Serving the Area in Question.

Residents of the City of Fairbanks appear to be content with either form of municipal government. Their city government has operated as a home rule municipality for forty years while their borough government has operated as a general law municipality for nearly 37 years.

(e) Practical and Political Considerations.

State law allows petitioners to prepare and submit a proposal for formation of a home rule municipality through consolidation [AS 29.06.100(b)(5), AS 29.10.010(c), and AS 29.10.010(f)]. Petitioners in other parts of the state have done so on two previous occasions.

The first was the March 31, 1998 *Petition by the City of Haines and the Haines Borough for Consolidation as a Home Rule Borough*. The second is the pending May 5, 2000 *Petition for Consolidation of the Ketchikan Gateway Borough and the City of Ketchikan to the Municipality of Ketchikan, a Home Rule Borough*.

In both instances, the petitioners were municipal governments (unlike the pending Fairbanks consolidation proposal where the petition was initiated by voters). The 1998 Haines consolidation proposal was

initiated through a petition filed jointly by the City of Haines and the Haines Borough. The pending Ketchikan consolidation petition was initiated by the City of Ketchikan.

PETITION FOR CONSOLIDATION OF THE KETCHIKAN GATEWAY BOROUGH AND THE CITY OF KETCHIKAN TO THE MUNICIPALITY OF KETCHIKAN, A HOME RULE BOROUGH¹

To: The State Of Alaska, Local Boundary Commission:

The Petitioner hereby requests that the Local Boundary Commission grant this petition for consolidation resulting in the dissolution of the home rule city and general law borough described herein and the incorporation of a home rule borough under the provisions of Article X, Sections 1, 3, and 5 of Alaska's constitution, AS 29.06.090 - AS 29.06.170; 3 AAC 110.240 - 3 AAC 110.250; 3 AAC 110.400 - 3 AAC 110.660; and 3 AAC 110.900 - 3 AAC 110.990.

1. CONSOLIDATION PROPOSAL. The Petitioner, the City of Ketchikan, a political subdivision of the State of Alaska, hereby petitions to dissolve the municipalities named below and to incorporate, through consolidation, the home rule borough named below and described in this petition:

Municipalities to be Dissolved by Consolidation:

Name: City of Ketchikan (hereafter "City").
Class: home rule.

Name: Ketchikan Gateway Borough (hereafter "Borough").
Class: second class borough.

Home Rule Borough to be Incorporated by Consolidation:

Name: Municipality of Ketchikan (hereafter "Municipality").
Class: home rule.

2. POPULATION. The populations of the municipalities proposed for consolidation are estimated to be as follows:

City of Ketchikan:	8,320 ²
Ketchikan Gateway Borough (including City)	13,961 ³

3. REASONS FOR CONSOLIDATION. A summary of the principal reasons for the consolidation proposal is provided as **Exhibit A**.

¹This petition, including the Charter, transition plan, proposed taxes and budget are subject to amendment by the Petitioner in accordance with 3 AAC 110.240 or, after submitted, by the Local Boundary Commission.

²Alaska Department of Community and Economic Development, December, 1999.

³Alaska Department of Community and Economic Development, December, 1999.



TABLE 1
Listing of Municipal Powers Exercised
within the Corporate Boundaries of the City of
Fairbanks

Powers Exercised by the Home Rule City of Fairbanks	Powers Exercised within the City of Fairbanks by the General Law FNSB
Fire protection	Public schools
Law enforcement	Property assessment and tax collection
Building inspection	Planning, zoning, and platting
Engineering	Air pollution control
Public works	Disaster and civil defense
Licensing and permits	Solid waste disposal
Street lights and traffic signals	Animal control
Parking authority	Parks and recreation
Street construction and maintenance	Flood control
Curbside trash pickup	Transportation system
Solid waste collection tipping fees	Child care assistance
Health center maintenance	Library
Cemeteries	Limited health and social services
Fireworks control	Enhanced 911 system
Emergency medical services	
Economic development	

Source: FNSB Brief, Ex. 2



Development of a consolidation proposal, particularly one that includes a suitable home rule charter, can be a daunting task. The Mayors of the City of Haines and the Haines Borough appointed a twelve-member commission to oversee the development of the charter and the consolidation proposal. Additionally, staff from the two local governments and the former Department of Community and Regional Affairs (DCRA) contributed extensive technical assistance to the effort. An informal DCRA weekly staff report at the time reflected the level of effort involved:

The twelve member Haines Consolidation Commission is collectively spending an estimated 180 hours a week developing the charter and other key provisions of the consolidation proposal. A full-time staff person has been hired by the Commission. Numerous staff from the City and Borough are contributing the estimated equivalent of at least one full-time position to the effort. Additionally, between DCRA's LBC staff and regional office staff, at least one more full-time equivalent position is providing technical assistance and support to the effort. Together, the equivalent of 7.5 full time positions are committed to the effort.

In addition to two regular meetings of the Commission each week, a number of committees are addressing particular issues. On February 16, LBC staff and staff from DCRA's Southeast Regional Office attended a two-hour community workshop in Haines on consolidation. The following day LBC/DCRA staff met with the Commission's staff, the Commission Co-Chairs and a committee of the Consolidation dealing with service areas. Efforts to draft a petition for consolidation of the local governments in Haines, including a home rule charter, appear to be on track. The deadline for the filing of the petition is April 2.

Local Boundary Commission staff, Haines Consolidation Effort on Track, February 18, 1998.

The resources involved in the development of the Ketchikan consolidation proposal exceeded those associated with the Haines consolidation proposal. Steven Schweppe, Ketchikan City Attorney, recently outlined the effort that went into preparation of the pending Ketchikan consolidation proposal:

... consolidation has been a ten year project with numerous people involved from time to time over that period. I have worked on consolidation year in and year out over this time period with most of my work occurring prior to 2000. I do not have a record of the time I spent on this project over all of these years. I can merely state that consolidation has been a major project in my office during most of these years. Other offices have had a more concentrated involvement. The City Finance Director estimates that he spent 500 hours on consolidation over the past year. The City Manager's office estimates that the three employees in that office spent 25% of their time during 1999 and 2000 on the consolidation petition. The City Clerk's office estimates that in 1999 and 2000 its two employees spent 5% of their time on consolidation. Borough employees have also spent considerable time on this issue.

The City and Borough have also spent money on outside consultants. The Chitwood Study in 1993 cost \$25,000, half of which was paid by the City and half by the Borough. In 1997 the City hired Gordon Lewis to assist in preparing its consolidation petition. The City spent \$19,736 on this effort. In addition, the Borough recently hired Vic Fischer.

Letter from Steven Schweppe to Dan Bockhorst, September 19, 2000, at 1.

As noted earlier, in contrast to the Haines and Ketchikan consolidation proposals, the Fairbanks consolidation proposal was initiated by the voters. Neither the City of Fairbanks nor the FNSB participated in developing the petition, and both governments now oppose the



proposal.²³ The task of preparing the Fairbanks consolidation petition was assumed by a small group of citizens. Given the limited resources of the Petitioners, it would have been very difficult, perhaps unreasonably so, for them to attempt to draft a home rule charter suitable for the region.

Moreover, the Petitioners deliberately selected the second class form of government for the proposed consolidated borough in order to limit the extent of the changes to be presented to the voters. They recognized that further changes, if desired by the voters, could be made incrementally.

In addition to the challenges stemming from the limited resources of the Petitioners, political considerations may have also heavily influenced the decision to propose the incorporation of a second class borough through consolidation. Criticism was leveled at both the Haines and Ketchikan consolidation proposals by citizens of those respective communities over the fact that elected charter commissions were not established to prepare the charters for those consolidation proposals. It is not difficult to imagine that criticism and controversy would have also resulted in the instant proposal had the small group of Fairbanks consolidation sponsors drafted and proposed a charter for the 83,814 citizens in Alaska's second most populous municipal government. In contrast to the process for adoption of a charter in conjunction with consolidation, the process for adoption of a charter by an existing general law municipality requires the election of a seven member charter commission to prepare the charter (AS 29.10.010).

It is noteworthy that when the 1963 Legislature adopted the Mandatory Borough Act, in part, for the express purpose of providing for maximum local self-government, the legislature stipulated that boroughs formed under the Act would be general law boroughs. The legislature recognized, as do the Petitioners in this case, that citizens have the right to advance to home rule status once the government is established.

DCED's Conclusion Concerning Practical and Political Considerations.

The demands associated with the preparation of a proper consolidation petition are substantial. It is perhaps unreasonable to expect a small group of citizens who lack extensive support from the affected local governments to draft a suitable charter for a consolidated home rule government. Any attempt to do so would almost certainly be criticized by local citizens as lacking the legitimacy of a charter developed by an elected charter commission. The decision to propose a second class consolidated borough is defensible on this issue alone.

(f) The ephemeral nature of the loss of home rule status in the case at hand.

If consolidation occurs, the resulting general law status for the Municipality of Fairbanks would be ephemeral – progression to home rule could be initiated at any time. The initial step in adopting a charter for an existing municipality is to call for the election of a charter commission. That call can be made by petition from voters

23 Sponsors of the consolidation proposal provided officials of the City of Fairbanks and the FNSB the opportunity to review the consolidation petition in draft form before it was circulated for signature. The Petitioners' representative indicates that officials of the Borough reviewed two drafts of the petition but the City declined to comment on a draft of the petition. The Petitioners' Representative also advised DCED staff that employees of both local governments were consulted on various aspects of the consolidation proposal.



or by a resolution of the governing body of the municipality (AS 29.10.010).

(3) DCED's Overall Conclusions Concerning Maximum Local Self-Government.

First and foremost, maximum local self-government is achieved through the extension of city or borough government to an area previously without municipal status. The Constitutional Convention delegates envisioned that home rule would provide the highest form of local self-government. However, the judiciary and legislature have eroded aspects of the powers of home rule municipalities in Alaska as compared to the vision of the Constitutional Convention delegates. In contrast, the judiciary and legislature have significantly enhanced the powers of general law municipalities in Alaska. Today, general law municipalities can reasonably be described as having home rule-like powers.

Residents of the City of Fairbanks receive essential services from both forms of government (home rule and general law), and seem to be content with either. The Petitioners' decision to propose a second class consolidated borough is fully defensible in terms of the limited resources available to the sponsors and on the grounds that citizens of the greater Fairbanks area are likely to prefer to deal with any proposal to adopt a home rule charter through democratically elected representatives. Therefore, DCED concludes that the instant consolidation proposal serves the constitutional principle of maximum local self-government.

b. Minimum number of local government units.

(1) Views of the Parties

As noted earlier, Article X, Section 1 of Alaska's Constitution provides, in part, that, "[t]he purpose of this article is to provide for maximum local self-government *with a minimum of local government units*, and to prevent duplication of tax-levying jurisdictions. (emphasis added)

The Petitioners indicate that the minimum of local government units principle is served by the pending proposal.

The proposed consolidation will dissolve the Home Rule City of Fairbanks and the Second Class Fairbanks North Star Borough to form one consolidated local government. The proposed second class status of the consolidated municipality will meet the constitutional intent by maintaining local self-government while reducing the number of local government units.

Petition, Ex. A, p. 1. The Petitioners also express the view that "[t]he constitutional convention delegates who designed Alaska's system of local government considered a borough government without cities to be the optimum form of local government." *Petition*, Ex. H, p. 1.

The City of Fairbanks contests the Petitioners' view that consolidation promotes a minimum of local government units. Specifically, the City states:

Nothing in Article X addresses or requires consolidation of cities within boroughs or creation of more than one city inside a borough. Article X, § 1 provides that the "purpose of this article is to provide for maximum local self-government with a minimum of local government units." Victor Fischer, an authority on Alaska government,



advises that the minimum of local government units language . . . was aimed at avoiding special districts such as health, school, and utilities districts having separate jurisdiction or taxing authority. He notes no policy was stated limiting the number of cities and boroughs.²⁴

The concept that all cities within organized boroughs would become "Urban Service Areas" was not adopted. A full discussion on the history of the Constitutional provisions regarding local government is attached. (Exhibit "B") Converting a viable city of 32,000-plus residents into a service area inside a second-class borough does not provide for "maximum self-government with a minimum of local government units."

City Brief, pp. 13-14.

The Fairbanks North Star Borough also disputes the Petitioners' assertion that the consolidation proposal promotes a minimum of local government units. The Borough states:

In 1955, the delegates to the Alaska Constitutional Convention set the course for a new approach to local government for what would be the State of Alaska. The centerpiece was a strong regional government called the borough whose boundaries would be determined by natural geographic and socio-economic factors. The goal was to have the minimum number of regional, local government units that would have the full range of municipal powers. These principles are reflected in several provisions of the Local Government Article of the Alaska Constitution. The first, and most obvious is found in Section 1 of Article X which states, in part,

The purpose of this article is to provide for maximum local self-government with a minimum of local government units. . .

Another provision of the Local Government Article that implements this purpose is Section 2 which provides that local government powers may be vested only in boroughs and cities and that only boroughs and cities may exercise the power of taxation. Thus, the delegates did not intend any special purpose governmental districts to exercise local government powers or levy taxes.

The delegates also recognized that there would undoubtedly be situations where areas within a borough require governmental services different from those of other areas. For this reason, the delegates provided in Section 5 of Article X that boroughs could establish service areas to provide special services and authorize the levying of taxes or other charges within the service area to finance the service. However, the second sentence of Section 5 of Article X of the Alaska Constitution reads:

A new service area shall not be established if, consistent with the purposes of this article, the new service can be provided by an existing service area, by incorporation as a city, or by annexation to a city.

Thus, the delegates to the Constitutional Convention provided that service areas should not be formed if the services needed could be provided through incorporation as a city. As the Alaska Supreme Court has held, "although the framers entertained the idea of unified local governments, they realized that the need for cities still existed." Keane v. Local Boundary Commission, 893 P.2d 1239 (Alaska 1995).

**CONSOLIDATION WILL NOT PROMOTE MAXIMUM
LOCAL SELF-GOVERNMENT
WITH A MINIMUM OF LOCAL GOVERNMENT
UNITS**

As the Alaska Supreme Court stated in Keane, "Whether a service area or a city is established, another government unit is created." Merely

24 (Footnote original) DCRA Report to the Alaska Local Boundary Commission on the Proposed Yakutat Borough Incorporation and Model Borough Boundaries for the Prince William Sound, Yakutat, Cross Sound/Icy Strait Regions 50 (December 1991); Keane v. Local Boundary Commission, 893 P.2d 1244 n.7 at 1251 (Alaska 1995).



changing the form of the City to a service area does not reduce the number of local government units or comply with Article X, Section 1 of the Alaska Constitution. . . .

FNSB Brief, pp. 6-7.

James Moody, one of two correspondents who offered written comments on the consolidation proposal states that the Petitioners' assertion that consolidation is proposed, in part, to promote maximum local self-government with a minimum of local government units is specious and misleading. He states that, "substituting the 'Urban Service Area' for the 'City' does not reduce the number of local government units." James E. Moody, *undated letter received August 1, 2000*, p. 2.

The Petitioners respond as follows to the view that consolidation does not serve the minimum of local government units clause of Alaska's Constitution:

The Borough attempts to argue that the Alaska Constitution does not allow for Consolidation of Cities and Boroughs and that Section 1 of Article X states, in part, "The purpose of the article is to provide for maximum local self-government with a minimum of local government units...

Reply: The Borough neglects (purposely?) to complete Section 1 wherein it adds "**and to prevent duplication of tax-levying jurisdictions.**" (Emphasis added by Petitioners)

. . . Maybe the Borough can't count! Obviously dissolving two government units and forming one municipality does create a minimum of local government units. The Borough has 117 service areas now with a multitude

of services and adding another service area increases the service areas to 118, but it reduces by 50% the number of municipalities with elected and appointed officials. . . .

. . . The residents of the former City of Anchorage, now a service district, have seen the former city blossom with unification and they now deal with just one jurisdiction instead of two. That is providing the maximum local self-government with the minimum of local government units!

Reply Brief, Sec. 1, pp. 2-3.

(2) DCED's Analysis

The pending consolidation proposal seeks to dissolve two existing local government units (City of Fairbanks and Fairbanks North Star Borough) and create two new local government units of corresponding size (Municipality of Fairbanks and Urban Service Area).²⁵

Arithmetically, the consolidation proposal does not reduce the number of local government units serving the greater Fairbanks area. However, as was the case with regard to the preceding discussion of the maximum local self-government clause, to stop the analysis here would result in an unduly superficial treatment of this issue.

The Committee on Local Government at the Constitutional Convention considered that a borough with no city governments within the borough to be the ideal structure of municipal government in Alaska. The founders rejected a proposal for the *immediate* abolition of cities. However, the Committee anticipated that boroughs and cities within them would

25 Borough service areas are not local governments. They lack legislative and executive powers. Instead they are simply areas in which boroughs exercise different powers or provide different levels of service as compared to other parts of the borough. Nonetheless, borough service areas are local government *units* in the context of the minimum of local government units clause found in Article X, § 1 of Alaska's Constitution. [See *Keane v. Local Boundary Commission*, 893 P.2d 1239, 1243 (Alaska 1995)]



AT A GLANCE

DCED'S VIEWS CONCERNING MINIMUM OF LOCAL GOVERNMENT UNITS

The Fairbanks consolidation proposal would not reduce the total number of local government *units* serving the greater Fairbanks area, however, it would reduce the total number of *local governments* serving the area. Constitutional scholars, local government experts, and Alaska's judiciary consider the abolition of cities and their reconstitution as urban service areas under the borough to be consistent with the minimum number of local government units clause of Alaska's Constitution. Such effect would result if the pending consolidation proposal is approved by the LBC and voters in the FNSB. Therefore, DCED considers the Fairbanks consolidation proposal to serve the minimum of local government units clause of Alaska's Constitution.

Though the committee seriously considered the possibility of a single unit of local government for urban areas, it rejected the idea as an immediate goal for

... it was the opinion of the Committee that while ... [the abolition of cities] had very definite advantages of one completely unified government ... it was too drastic a step to take at one point ... to abolish these units altogether.²⁷

As a practical solution, the committee proposed a dual system of local government – borough and city. Significantly,

gradually evolve into single unit governments. Conflicts between cities and boroughs in the 1960s led to the enactment of legislation in 1967 to authorize unification of local governments. Local government experts Jerome R. Saroff and Ronald C. Cease wrote the following concerning the constitutional provisions involving city/borough relationships as well as efforts in the late 1960s to enact legislation to allow unification of local governments:

however, it “viewed the long-term relationships between the borough and the city as a gradual evolution to unified government.”²⁸ The committee hoped that there would be cooperation between the two units, and that “where functions overlapped, they would be integrated.”²⁹ It intended that those functions of government that could best be performed on an areawide basis would be handled by the larger unit, the borough. However, the relationship between boroughs and cities has been characterized more by conflict than by cooperation.

During the Constitutional Convention when Alaskans were considering the structure and organization of local government, the Committee on Local Government pondered several alternatives. One of these was “Abolition of cities and their reconstitution as special urban tax districts within the larger units [i.e., the borough].”²⁶

Conflict, in fact, has so often been the hallmark of the relationship that many people in the more urbanized parts of the State have begun to agitate for the unification of the two units. Accordingly, there is a recent interest in legislation which would bring about borough-city integration, without waiting for the slow, gradual, and perhaps painful absorption of city functions by boroughs.

26 (Footnote original) Minutes of the Committee on Local Government, No. 19.

27 (Footnote original) John H. Rosswog, in Minutes, p. 2612.

28 (Footnote original) Final Report on Borough Government, p. 17. (Note by DCED: the cited page is in error, the correct citation is page 43.)

29 (Footnote original) Minutes, p. 2625.



Late in 1965, the mayor of the City of Anchorage, who felt that the existence of two units of local government was wasteful and productive of needless conflict, discussed with various local leaders, including the Anchorage borough chairman, the desirability of merging or consolidating the city and borough.³⁰ The reception was favorable.

A prominent member of the House of Representatives, Ted Stevens of Anchorage, working closely with city and borough officials, provided a draft of a bill designed to permit unification of city and borough. Before formally introducing the bill, he brought it to the House Local Government Committee for review and suggested changes. After some discussion and study, the bill was redrafted and introduced as House Bill No. 409. Mr. Stevens introduced the bill, which was cosponsored by John L. Rader (the original sponsor of the Mandatory Borough Act), the chairman of the House Local Government Committee from Kodiak, and a Juneau area legislator. The sponsorship indicated support from several major areas of the State. The new media gave House Bill No. 409 wide coverage. Editorial comment was almost uniformly favorable:

We believe local officials have taken a bold step in advancing the idea of a new form of local government. It demonstrates awareness of a problem too often ignored – the problem of conflicting boundaries, overlapping services and expensive conflicts of jurisdiction.... The proposal as it has been sketched could represent a pioneering form of local government that avoids mistakes made elsewhere.³¹

Ronald C. Cease and Jerome R. Saroff, eds., *The Metropolitan Experiment in Alaska*, 1968, pp. 357 – 359.

In 1971, Thomas Morehouse and Victor Fischer offered additional insights concerning the views of the Local Government Committee regarding the constitutional relationship between cities and boroughs.

Given the general direction and character of their thinking on boroughs, the Local Government Committee was faced with the question of what to do about existing and future cities. Consideration was given to the possibility of doing away with cities altogether, even though they were the only units of general local government then existing in Alaska.

Abolition of cities and their reconstitution as urban service areas under the borough was considered as one way of promoting joint use of facilities and services and avoiding duplication of taxing jurisdictions. But other ways of achieving these objectives were also considered: extension of city boundaries to cover entire urban areas, and eventual unification or consolidation of borough and city governments. It was also recognized that cities had over the years developed distinct corporate identities and a substantial array of facilities and services; any sudden change from municipal status to uncertainty under the borough was not likely to be acceptable to city residents.³²

30 (Footnote original) In this chapter “merger” and “consolidation” are used as they are colloquially, i.e., simply as catch-alls for unification. Actually, the two terms are not the same. “Merger” means dissolution of a municipality and its absorption by another municipality. “Consolidation” means dissolution of two or more municipalities and their incorporation as a new municipality.

31 (Footnote original) “What About the Merger?” *Anchorage Daily News*, February 14, 1966.

32 (Footnote original) *Minutes*, 14th, 15th, and 19th Meetings.



It was decided that the status of cities should not be changed directly by the constitution; they would continue to exist. It was stipulated, however, that the city be a “part” of the borough in which it was located, and other provisions were made with the intent of encouraging cooperation between cities and boroughs. These included joint service of city councilmen on the legislative bodies of both the city and the borough,³³ joint performance of functions, and voluntary transfer of functions from the city to the borough.

While designing an ideal model, delegates were not unaware of the potential for local government conflict. Indeed, the Alaska local political scene at the time was highlighted by disagreements between cities and school districts, battles over annexation, and troubles between cities and public utility districts.³⁴ Delegates were also aware of interjurisdictional problems existing among cities, counties, and special districts in the larger urban areas of other states. They thus sought to create a system in which conflict would be minimized.

Thomas A. Morehouse and Victor Fischer, *Borough Government in Alaska*, 1971, pp. 43-44.

In 1971, the Alaska Supreme Court concluded that unification of local governments serves the minimum of local governments clause in Article X, Section 1. The ruling stemmed from a challenge by the former home rule City of Douglas regarding the unification of local

governments in the greater Juneau area. While “unification” is distinct from “consolidation”, both result in the reduction of the number of local governments. When the City of Juneau and the City of

Douglas were abolished through unification in 1970, each was reconstituted as a separate urban service area with boundaries identical to

“... unification is consistent with the purpose expressed in Article X, section 1 of minimizing the number of local government units ...”

Alaska Supreme Court

33 (Footnote by DCED) In 1972, Alaskans voted to amend Article X, § 4 to delete the requirement that “[e]ach city of the first class, and each city of any other class designated by law, shall be represented on the assembly by one or more members of its council. The other members of the assembly shall be elected from and by the qualified voters resident outside such cities.” In a 1987 publication, Victor Fischer characterized the former constitutional provision as one that “caused constant friction between the two blocks representing city and non-city parts of most boroughs.” He noted further that the 1972 amendment “reduced dissension on borough assemblies and permitted them to deal more peacefully with areawide matters.” (Gerald A. McBeath and Thomas A. Morehouse, eds., *Alaska State Government and Politics*, 1987, p. 49. DCED adds to Mr. Fischer’s insights that the repealed requirement for equal representation under the State and Federal constitutions also rendered the provision in Article X, § 4 impractical. For example, if the constitutional provision were in place today, the City of Seldovia (population 284) would be guaranteed at least one representative on the Kenai Peninsula Borough Assembly. The equal representation clauses of the State and Federal constitutions would then entitle the City of Homer (population 4,154) to 15 representatives on the Assembly; while the Assembly for the whole Kenai Peninsula Borough (population 48,952) would have to be comprised of 172 members.

34 (Footnote original) See *Minutes*, 12th, 35th, and 40th Meetings, *Proceedings*, pp. 2637-38.



the respective former cities.³⁵ Therefore, the Court's holding in that case that "[u]nification is consistent with the purpose expressed in article X, section 1 of minimizing the number of local government units" is relevant and applicable to the instant consolidation proposal. The Court stated in 1971:

Appellants further contend that unification is barred by an implied constitutional requirement that cities not be dissolved in favor of boroughs.³⁶ On this theory appellants challenge the constitutionality of AS 29.85.170, which provides that upon ratification of the unification charter, local government units within the unified area are dissolved. We think appellants' challenge is for the most part disposed of by our discussion pertaining to the constitutionality of AS 29.85.160(c). *Unification is consistent with the purpose expressed in article X, section 1 of minimizing the number of local government units.* (emphasis added by DCED) Article X, section 2 merely authorizes but does not require the coexistence of cities and boroughs. In view of the express constitutional policy of minimizing the number of local government units, the grant to the legislature of the power to decide on the manner of dissolu-

tion of cities, found in article X, section 7, and the absence of either an explicit ban against unification, or a persuasive basis for inferring such a prohibitions, we hold AS 29.85.170 constitutional.

City of Douglas v. City and Borough of Juneau, 484 P.2d 1040, 1044 (Alaska 1971).

In 1991, at the request of the Alaska Municipal League, the State legislature established the Task Force on Governmental Roles to define optimum Federal, State, and local responsibilities in providing public services in Alaska. The Task Force was charged with three principal tasks, one of which was to review "the most efficient means of funding public services." Governor's Office of Management and Budget and the Alaska Municipal League, *Task Force of Governmental Roles – Final Report*, July 10, 1992, p. 5. In this regard, the Task Force concluded:

Another main organizational thrust embodied in the state constitution is to develop a streamlined system of local government. There are four available means of unification. The first is conventional unification. Juneau, Sitka and Anchorage chose to unify and

35 Section 16.10 of the *Charter of the City and Borough of Juneau, Alaska* provides, "FUNCTIONS TO CONTINUE. Subject to Article XI of this Charter, service areas in existence on June 30, 1970, shall continue to exist. The area of the former cities of Douglas and Juneau shall each comprise a service area. The functions of local governments and service areas being exercised immediately prior to July 1, 1970, may continue insofar as consistent with this Charter, except that the assembly may alter, consolidate, or abolish service areas and may add or eliminate services as provided by this Charter."

36 (Footnote original) The Constitutional provisions from which appellants infer a bar against unification are art. X, §§ 1, 2, 4, 7, 9, and 13. These six sections provide, respectively, that (1) the purpose of the local government article is to "provide for maximum local self-government with a minimum of local government units"; (2) "[a]ll local government powers shall be vested in boroughs and cities"; (4) cities are to be represented on borough assemblies; (7) cities are to be incorporated, merged, consolidated, and dissolved as provided by law and shall be part of the boroughs in which they are located; (9) home rule charters may be repealed by the voters of the city or borough having the charter; (13) cities may transfer powers of functions to boroughs unless prohibited by law or charter and may revoke the transfers. Appellants' argument is that these sections show that their draftsmen contemplated the continuation of cities within boroughs rather than the swallowing up of the former by the latter.



Fairbanks and Ketchikan have both considered and rejected this approach. The second is a merger in which one or more municipalities merge into an existing municipality with the latter becoming the surviving municipality. The third is consolidation, where one or more municipalities consolidate into a new unit of government with all of the former units disappearing. This is the method that was looked at by the City of Kodiak and Kodiak Island Borough and is currently being explored by the Ketchikan Gateway Borough and the City of Ketchikan. The fourth method involves cities within a borough dissolving under the procedures set out in Title 29 whereby the borough succeeds to the responsibilities of the dissolved cities. This is currently being examined by the Northwest Arctic Borough. The Task Force endorses all of these methods.

- ***Unification of borough and city administrations should be encouraged wherever possible for more efficient and cost-effective service delivery.***

Ibid., p. 15.

According to the National Association of Counties (NACo), there were just 31 “city/county consolidated governments” in the nation as of 1998. Those are defined as “a government in which there has been a formal joining of a city (or cities) with a county government. This consolidation creates one unified governing organization that assumes the responsibilities of both the city and the county.” Peggy Beardslee, *Questions and Answers on Consolidation*, National Association of Counties, July 1998.

City/county consolidated governments account for only 1% of the 3,069 county governments (or their equivalent) in the United States. Only 17 of the 50 states have city/county

consolidated governments. Virginia has the most (5), followed by Louisiana (4). Alaska and Georgia are tied for third place with 3 city/county consolidated governments each. Table 2 on the following page identifies the city/county consolidated governments recognized by NACo.

NACo lists the municipal governments in Anchorage, Juneau, and Sitka as the only city/county consolidated governments in Alaska. Those three account for nearly 10% of the consolidated governments nationwide.

However, Alaska actually has two other organized boroughs in which there are no city governments. Those consist of the City and Borough of Yakutat and the Bristol Bay Borough. Thus, five of Alaska’s sixteen organized boroughs (31%) operate as consolidated governments. Moreover, the City of Haines is presently preparing a petition for consolidation with the Haines Borough. Further, a petition is pending for consolidation of the City of Ketchikan and the Ketchikan Gateway Borough. The Ketchikan consolidation petition would leave the City of Saxman in place, but would place more than 97% of the population of the Ketchikan Gateway Borough under a single government.

Boroughs were first formed in Alaska during the 1960s. The 1970 census indicated that nearly 50 percent of Alaskans who lived in organized boroughs also lived within city governments. Today, that figure stands at only 18 percent. It is a testament to the effectiveness of Alaska’s constitutional policy promoting city and borough consolidation that nearly one-third of all organized boroughs in Alaska have no city governments within them and that more than 80% of organized borough residents receive

“Unification of borough and city administrations should be encouraged wherever possible for more efficient and cost-effective service delivery.”

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Table 2
Consolidated Local Governments in the United States

City/County Consolidated Governments	Consolidation Date
New Orleans-Orleans Parish, Louisiana	1805
Nantucket Town-Nantucket County, Massachusetts	1821
Boston-Suffolk, Massachusetts	1821
Philadelphia-Philadelphia, Pennsylvania	1854
San Francisco-San Francisco County, California	1856
New York (5 Boroughs), New York	1890's
Denver-Denver County, Colorado	1902
Honolulu-Honolulu County, Hawaii	1907
Baton Rouge-East Baton Rouge Parish, Louisiana	1947
Hampton-Elizabeth City County, Virginia*	1952
Newport News-Warwick County, Virginia*	1957
Chesapeake-South Norfolk-Norfolk County, Virginia*	1962
Virginia Beach-Princess Anne County, Virginia*	1962
Nashville-Davidson County, Tennessee	1962
Jacksonville-Duval County, Florida	1967
Juneau-Greater Juneau County, Alaska	1970
Carson City-Ormsby County, Nevada*	1969
Indianapolis-Marion County, Indiana	1969
Columbus-Muscogee County, Georgia	1970
Sitka-Greater Sitka County, Alaska	1971
Lexington-Fayette County, Kentucky	1972
Suffolk-Nansemond County, Virginia*	1972
Anchorage-Greater Anchorage County, Alaska	1975
Anaconda-Deer Lodge County, Montana	1976
Butte-Silver Bow County, Montana	1976
Houma-Terrebonne Parish, Louisiana	1984
Lynchburg City-Moore County, Tennessee	1988
Athens-Clarke County, Georgia	1990
Lafayette/Lafayette Parish, Louisiana	1992
Augusta/Richmond County, Georgia	1995
Kansas City/Wyandotte County, Kansas	1997

*Denotes independent cities which historically are city-county consolidations.

Source: Peggy Beardslee, *Questions and Answers on Consolidation*, July, 1998
<http://www.naco.org/pubs/research/briefs/consol.cfm>

Note: DCED corrected an error in the date stated by NACo for the unification of governments in Juneau.



municipal services only from their borough government. Moreover, petitions are pending or under development for consolidation of cities and boroughs in three more areas of Alaska. If those petitions are approved, the number of borough residents served by a city and separate borough would drop to about ten percent.

Lastly, DCED notes that constitutional expert Vic Fischer concluded earlier this year that the pending Ketchikan consolidation proposal “meets the constitutional goal of maximizing self-government while *minimizing the number of government units.*” (emphasis added). Vic Fischer, *Preliminary Report on Municipal Consolidation Petition*, August 11, 2000, p. 3. (“Fischer II”)

Mr. Fischer’s conclusion that the Ketchikan consolidation proposal meets the minimum of local government units clause is relevant to the Fairbanks consolidation proposal. Both consolidation proposals share fundamental characteristics that bear on the constitutional principle at issue. In each case the respective boroughs encompass two city governments, one populous and one with a relatively small number of inhabitants. The Ketchikan Gateway Borough includes the City of Ketchikan (59.2% of the Ketchikan Gateway Borough’s population) and the City of Saxman (2.6% of the Ketchikan Gateway Borough’s population). In comparison, the City of Fairbanks encompasses 37.5% of the FNSB’s population and the City of North Pole encompasses 1.9% of the FNSB’s population. The Ketchikan consolidation petition proposes to dissolve the larger city and reconstitute it, with a minor boundary change, as an urban service area with multiple functions. The smaller city would remain in existence. Likewise, the Fairbanks consolidation petition proposes to dissolve the larger city and reconstitute it as an urban service area with multiple functions. Again, the smaller city government would remain in existence.

(3) DCED’s Conclusion Concerning the Minimum of Local Government Units Clause

While the pending consolidation proposal will not reduce the number of local government *units* in the greater Fairbanks area, it will reduce the number of *local governments* serving that area. The founders “viewed the long-term relationships between the borough and the city as a gradual evolution to unified government.” The pending consolidation proposal is a major step in that evolutionary process. The founders also considered “[a]bolition of cities and their reconstitution as urban service areas under the borough” to be one way to achieve minimum numbers of local governments. The pending consolidation proposal would achieve that result with respect to the City of Fairbanks. The 1991 Task Force on Local Government established by the Alaska Legislature at the request of the Alaska Municipal League also concluded that “unification” (used colloquially to include consolidation) “should be encouraged wherever possible for more efficient and cost-effective service delivery.” Moreover, the Alaska Supreme Court considers unification in which city governments are replaced with borough service areas as being “consistent with the purpose expressed in article X, section 1 of minimizing the number of local government units.” Again, the pending consolidation would achieve that end. Lastly, constitutional expert Vic Fischer considers the Ketchikan consolidation application – a proposal with identical fundamental characteristics relating to the issue at hand – to meet the constitutional standard at issue. On the basis of these considerations, DCED concludes that the proposal before the Commission for the consolidation of certain local governments in the greater Fairbanks area serves the minimum of local government units clause found in Article X, § 1 of Alaska’s constitution.



2. Article X, Section 5 of Alaska's Constitution – Service Areas.

(1) Views of the Parties

The fifth Section of Article X provides for the establishment of service areas in organized boroughs:

Service areas to provide special services within an organized borough may be established, altered, or abolished by the assembly, subject to the provisions of law or charter. A new service area shall not be established if, consistent with the purposes of this article, the new service can be provided by an existing service area, by incorporation as a city, or by annexation to a city. The assembly may authorize the levying of taxes, charges, or assessments within a service area to finance the special services.

The FNSB argues that Article X, Section 5 of Alaska's Constitution creates a preference for the existing City of Fairbanks over the proposed Urban Service Area.

The Alaska Supreme Court has interpreted [Article X, § 5 of Alaska's Constitution] and AS 29.35.450(b) as preferring incorporation of a city over the creation of new service areas.

Whether a service area or a city is established, another government unit is created. If numerous service areas are set up supplying only one or two services each, there is the potential for an inefficient proliferation of service areas. In contrast, **once a city is established, it can provide many services, and other communities can annex to the city in the future. Although the framers entertained the idea of unified local governments, they realized that the need for cities still existed.**

... We also clarify that there is a statutory and constitutional preference for incorporation of cities over the establishment of new service

areas. We believe these to be reasonable and practical interpretations of the Alaska Constitution in accordance with common sense.

Keane, 893 P.2d at 1244 (emphasis by FNSB).

FNSB Brief, pp. 9-10.

The Petitioners respond to the FNSB's views as follows:

The Borough further tries to justify their stance that a city cannot become a service area quoting Section 5, Article X of the Alaska Constitution; "A new service area shall not be established if, consistent with the purposes of the article, the new service area can be provided by an existing service area, by incorporations (sic noted by DCED) as a city, or by annexation to a city."

Reply: In 1970, when the Juneau Borough unified, both the City of Juneau and the City of Douglas each became a service area of the new municipality. When challenged, the court ruled in that regard that: "Unification is consistent with the purpose expressed in Article X section 1 of minimizing the number of local government units. Article X, section 2 merely authorizes but does not require the coexistence of cities and boroughs."

Both the City of Anchorage and the City of Sitka became service areas of the new Boroughs when those municipalities unified. The Petitioners believe the same standards apply to Consolidation.

Further the Constitutional convention delegates who designed Alaska's system of local government considered a borough without cities to be the optimum form of local government. . . .

Reply Brief, Sec. 1, p. 2.

Regarding the FNSB's views that the Alaska Constitution prefers the incorporated City of Fairbanks over establishment of the Urban Service Area, the Petitioners state:



The Borough is beating a dead horse! The Alaska Constitution says no such thing! This issue was discussed in the previous reply. If what the Borough is saying was true, the courts would have disallowed the previous unification of the Juneau, Sitka and Anchorage Boroughs some 30 years ago.

Ibid., Sec. 1, p. 3.

(2) DCED's Analysis

Article X, § 5 does not express a preference exclusively for city incorporation over the creation of a new service area. It explicitly states a preference for the provision of a new service within an existing service area or annexation to an existing city over the creation of a new service area. The key point of Article X, § 5 with regard to the pending consolidation proposal is that it favors a structure that is "consistent with the purposes" of Article X, § 1— one that encourages a minimum of local government units. As noted in the preceding section of this report, DCED concludes that the Fairbanks consolidation proposal serves the minimum of local government units clause in Article X, § 1 of Alaska's constitution.

Moreover, there are several fundamental distinctions between the circumstances involved in *Keane v. Local Boundary Commission* and those associated with the pending proposal for consolidation of local governments in the Fairbanks area. First, *Keane* concerned the relatively uncomplicated question of whether services to a particular unincorporated community (Pilot Point within the Lake and Peninsula Borough) could best be provided by

AT A GLANCE

DCED'S VIEWS CONCERNING SERVICE AREAS VERSUS CITIES

Under certain circumstances, Alaska's Constitution does indeed establish a preference for a city government over a borough service area. However, such circumstances do not extend to city/borough consolidation proposals. Article X, § 5 of Alaska's Constitution is not an impediment to the pending consolidation of local governments in the Fairbanks area.

incorporating a new city government or by forming a new borough service area. In contrast, the Fairbanks consolidation proposal involves a much broader inquiry entailing a greater complexity of constitutional principles.

Another important distinction is that the Fairbanks consolidation proposal is an areawide issue as reflected by the fact that consolidation, if approved by the LBC, will be subject to approval by voters throughout the Fairbanks North Star Borough. In contrast, city incorporation is a community issue. After the LBC approved the Pilot Point city incorporation proposal, the proposal required approval only from the citizens of Pilot Point.

Further, the Court recognized in *Keane* that the particular characteristics of a community were relevant and important to the determination of the best alternative for the delivery of services. See *Keane* at 1244. Pilot Point is a community of seventy people.³⁷ It comprises 3.9% of the

37 Population figures used here and in the rest of this paragraph are based on July 1, 2000 preliminary population figures provided by the Alaska Department of Labor and Workforce Development.



population of the Lake and Peninsula Borough. The City of Pilot Point ranks 139th among the 145 cities in Alaska in terms of population. Pilot Point is a remote, isolated community. Such characteristics were significant with regard to the Local Boundary Commission's preference for a city government over a service area in Pilot Point.

. . . Pilot Point was not accessible by road from any other community or the Borough seat at King Salmon. Distance between communities, lack of road access, expense and weather considerations render it difficult to provide local services to Pilot Point from King Salmon. Consideration of the difficulties inherent in delivering services over great distances was a critical factor in the context of the Commission's deliberations.

Local Boundary Commission, *Statement of Decision – In the Matter of the Reconsideration of aspects of incorporation of the second-class City of Pilot Point*, May 7, 1997, p. 5. ("LBC I")

Comparisons between Pilot Point and the area within the City of Fairbanks differ in the extreme. The City of Fairbanks has 31,423 residents – nearly 450 times the size of Pilot Point. The City of Fairbanks encompasses approximately 37.5% of the population of the FNSB – nearly ten times the comparable figure for Pilot Point. The City of Fairbanks ranks first among the 145 cities in Alaska with regard to population, whereas the City of Pilot Point ranks among the least populated. More importantly, the area within the City of Fairbanks is closely linked to other developed and inhabited parts of the FNSB by rail, water transportation facilities and an elaborate network of highways, roads, and streets.

It is also critical to note that even though the Court expressed a general preference in *Keane* for city incorporation over creation of service areas, the Court also implicitly acknowledged that a service area might be a more suitable structure for delivery of services even in the case of Pilot Point. The Court held that

The LBC erred in its incorporation determination [approving the petition for incorporation of the City of Pilot Point] by failing to address whether the Borough could reasonably and practicably provide the desired services. . . .(bracketed text added by DCED)

. . . . There is no indication that a determination of the "reasonableness" or "practicability" of a service area was considered. Therefore, we remand to the LBC to make findings consistent with this opinion.

Keane at 1244.

Further, the Court's holding concerning the preference for a city government over a service area was based, in part, from what seemed to be a perception that (1) there is limited capacity to provide services in service areas, (2) powers exercised in service areas cannot be expanded, and (3) the boundaries of service areas cannot be altered. The Court expressed its concern as follows:

If numerous service areas are set up supplying only one or two services each, there is the potential for an inefficient proliferation of service areas. In contrast, once a city is established, it can provide many services, and other communities can annex to the city in the future.

Ibid., at 1244.

The number and types of services that may be provided by a second class borough in a single service area are as extensive as a city government (see footnote 22). As discussed in the section dealing with maximum local self-government, a second class borough may exercise in a service area any power not otherwise prohibited by law. The Fairbanks consolidation proposal would not promote an inefficient proliferation of service areas. It would not supply only one or two services which was a focus of concern by the Court in *Keane*. The FNSB noted in its brief that:



The Petition in this proceeding proposes to consolidate the City of Fairbanks and the Fairbanks North Star Borough and to incorporate a new second class borough with service areas, including an *Urban Service Area which would provide almost all of the current City functions by most of the current City employees.* (emphasis added by DCED)

FNSB Brief, p. 1.

Moreover, municipal powers exercised within existing service areas may be expanded. See AS 29.35.490. In fact, State law prefers expansion of the powers of existing service areas over the creation of a new service area. See Article X, §5; AS 29.35.450(b). Additionally, State law allows the boundaries of service areas to be altered. See AS 29.35.450(b).

(3) DCED's Conclusion Regarding Article X, Section 5 of Alaska's Constitution – Service Areas

Article X, § 5 of Alaska's Constitution promotes a local government structure with a minimum of local government units. The Fairbanks consolidation proposal serves the minimum of local government units clause in Article X, § 1 of Alaska's Constitution and therefore serves the intent of Article X, § 5. *Keane v. Local Boundary Commission* does not compel the denial of the Fairbanks consolidation proposal.

Part B. Whether the Consolidation Proposal Meets Applicable Statutory and Related Regulatory Standards for City/Borough Consolidation

As noted previously, in order for the LBC to approve the pending petition for consolidation, the Commission must determine that the

proposed Municipality of Fairbanks meets the standards under AS 29.06.130(a) which, in this particular case, consist of the standards for borough incorporation under AS 29.05.031. The specific standards are set out below:

Sec. 29.06.130(a). Decision.

The Local Boundary Commission may amend the petition and may impose conditions for the merger or consolidation. If the commission determines that the merger or consolidation, as amended or conditioned if appropriate, meets applicable standards under the state constitution and commission regulations, the municipality after the merger or consolidation would meet the standards for incorporation under AS 29.05.011 or 29.05.031, and the merger or consolidation is in the best interests of the state, it may accept the petition. Otherwise, it shall reject the petition.

Sec. 29.05.031. Incorporation of a borough or unified municipality.

(a) An area that meets the following standards may incorporate as a home rule, first class, or second class borough, or as a unified municipality:

(1) the population of the area is interrelated and integrated as to its social, cultural, and economic activities, and is large and stable enough to support borough government;

(2) the boundaries of the proposed borough or unified municipality conform generally to natural geography and include all areas necessary for full development of municipal services;

(3) the economy of the area includes the human and financial resources capable of providing municipal services; evaluation of an area's economy includes land use, property values, total economic base, total personal income, resource and commercial development, anticipated functions, expenses, and income of the proposed borough or unified municipality;



(4) land, water, and air transportation facilities allow the communication and exchange necessary for the development of integrated borough government.

(b) An area may not incorporate as a third class borough.

In 1974, the Alaska Supreme Court held that the statutory standards for borough incorporation (which were then codified under AS 07) were not intended to be rigidly applied:

The standards for incorporation set out in AS 07.10.030 were intended to be flexibly applied to a wide range of regional conditions. This is evident from such terms as 'large enough', 'stable enough', 'conform generally', 'all areas necessary and proper', 'necessary or desirable', 'adequate level' and the like. The borough concept was incorporated into our constitution in the belief that one unit of local government could be successfully adapted to

both urban and sparsely populated areas of Alaska,³⁸ and the Local Boundary Commission has been given a broad power to decide in the unique circumstances presented by each petition whether borough government is appropriate. Necessarily, this is an exercise of delegated legislative authority to reach basic policy decisions. Accordingly, acceptance of the incorporation petition should be affirmed if we perceive in the record a reasonable basis of support for the Commission's reading of the standards and its evaluation of the evidence.

Mobil Oil Company v. Local Boundary Commission, 518 P.2d 92, 98 (Alaska 1974).

The Local Boundary Commission has adopted regulations relating to consolidation. For the most part, those regulations implement, interpret, or make specific the statutory standards listed above. The regulatory provisions directly related to the statutory

38 (Footnote original) A summary by the local government committee at the constitutional convention of the principles underlying the borough concept is preserved in T. Morehouse & V. Fischer, Borough Government in Alaska at 63-64 (1971). This relates:

Self-government-The proposed article bridges the gap now existing in many parts of Alaska. It opens the way to democratic self-government for people now ruled directly from the capital of the territory or even Washington D.C. The proposed article allows some degree of self-determination in local affairs whether in urban or sparsely populated areas. . . .

Flexibility-The proposed article provides a local government framework adaptable to different areas of the state as well as to changes that occur with the passage of time. . . .

The authors describe how evolution of the borough has reflected this intended flexibility.

(T)wo recognizable types of organized boroughs now exist in Alaska: the *regional borough*, generally covering an extensive area including several widely dispersed small communities, incorporated and unincorporated, and the *urban borough*, having a population concentrated primarily in a single urban core area, characteristically overspilling the boundaries of a central city. It could be anticipated that the local governmental system will evolve in the two directions of unification and regionalism associated with these basic physical and socio-economic patterns.

Id. at 107-09 (emphasis in original).



provisions are addressed in the context of the relevant statutory standards in this part of the report. The remaining regulatory standards for consolidation are addressed in Part C of this chapter. A copy of the regulatory standards for consolidation is provided in Appendix C of this report.

1. Social, Cultural, and Economic Interrelationships and Integration of Population; Size and Stability of Population.

(I) Views of the Parties

The Petitioners take the following position concerning the application of the statutory standards to their consolidation proposal:

The proposal to consolidate the home rule City of Fairbanks and the Fairbanks North Star Borough meets the standards for municipal incorporation outlined in AS 29.06.130 and 19 AAC 10.240. . . .

The petitioners stress that the Fairbanks North Star Borough has been in existence for thirty-four years. Since this consolidation proposal seeks to incorporate a second class borough with corporate boundaries identical to those of the existing second class Fairbanks North Star Borough, the petitioners strongly believe that presumption is warranted that this consolidation proposal satisfies all of the standards for borough incorporation.

Petition, Ex. H, p. 2.

The City of Fairbanks takes the position that the consolidation proposal fails to meet the statutory standard requiring a socially, culturally, and economically interrelated and integrated population. The City asserts in this regard that:

The essential character of the City of Fairbanks and North Pole is different than the area outside the two cities.³⁹ Both cities provide a host of urban services that are not provided outside their boundaries. Unlike the existing borough, the City of Fairbanks provides many services that are not duplicated. Just a few examples are police protection and criminal prosecution, enhanced advanced fire protection, fire code enforcement, twenty-four hour paramedic level advanced life support, building code enforcement, city-wide street maintenance and construction, snow removal, storm drain system, curbside refuse collection for all residential buildings with unlimited volume, street lighting, right-of-way regulation, and economic development. See the Affidavit of [City Mayor] James C. Hayes. (*Exhibit "A"*)

City residents live in a much higher density than their rural counterparts, and most are customers of community water and wastewater. The City of Fairbanks, with 31,697 residents living inside 33.8 square miles, has about 940 residents per square mile. The rest of the Borough is populated at only 7 people per square mile! A copy of a census map showing density of population in and around the City of Fairbanks is attached. (*Exhibit "E"*)

Looking at it another way, the City comprises only about .45% (less than half of 1%) of the Borough's territory, but 29% of total taxable assessed value. This reflects the concentration of facilities and density of settlement in the City compared to outside the City.

City Brief, pp. 14-15.

The Petitioners characterize the City's views as "grasping at straws in stating the existing borough is not interrelated and integrated as to

39 (Footnote original) This is true for the City of Fairbanks and the City of North Pole. As noted at page 1, the Petition has for some reason not included North Pole in the proposed consolidation.



AT A GLANCE

DCED'S VIEWS CONCERNING POPULATION CHARACTERISTICS

The proposed Municipality of Fairbanks has a population that is highly interrelated and integrated in terms of its social, cultural, and economic activities. Further, the population of the proposed consolidated borough is clearly large and stable enough to operate the government.

characteristics, and cultural nature of the area.

The City's assertion that the consolidation proposal fails to meet the statutory standard requiring a socially, culturally, and economically interrelated and integrated population conflicts with a formal determination on that very point just four years ago by the Local Boundary Commission. In a 1996 proceeding, the Commission concluded that, "[t]here is overwhelming evidence . . . that

its social, cultural, and economic activities." The Petitioners then proceed to list a number of the economic and institutional facilities along with public services available to residents of the FNSB. *Reply Brief*, Sec. 2, p. 2.

(2) DCED's Analysis

The FNSB has existed as a borough for nearly 37 years. Moreover, the current jurisdictional boundaries of the FNSB have been in place since March 13, 1983.⁴⁰ These circumstances create a strong presumption in favor of this standard, absent, of course, significant recent changes in the size and stability of the population, economic circumstances, social

the FNSB is an extremely well integrated borough in terms of its social, cultural and economic characteristics, natural geography, and transportation facilities." Local Boundary Commission, *Statement of Decision in the Matter of the Petition for Detachment of 5,400 Square Miles from the Fairbanks North Star Borough and the Petition for Incorporation of the Home Rule North Pole Borough*, August 30, 1996, p. 8. ("LBC II")

The Commission's 1996 determination was based on consideration of factors including the compatibility of urban and rural areas of the FNSB, the compatibility of economic lifestyles,

40 The North Star Borough was incorporated on January 1, 1964, under the 1963 Mandatory Borough Act (Chapter 52, SLA 1963). Its original boundaries were defined as "Fairbanks Election District #19 as designated in Sec. 3, Art. XIV, of the State Constitution." Excluded from the Borough were Ft. Wainwright Army Base, Eielson Air Force Base, and Ft. Greely Army Base. On January 29, 1964, the Local Boundary Commission submitted a recommendation to the Alaska legislature to alter the boundaries of the North Star Borough. The recommended boundary changes included the detachment of an estimated 11,054 square miles encompassing Delta Junction, Tok, and other territory extending southeasterly to the Canadian border; and the annexation of 1,333 square miles west of the original boundary. The legislature tacitly approved the recommendation which took effect 45 days later on March 14, 1964. Fort Wainwright was annexed to the Borough pursuant to Section 4 of Chapter 41, SLA 1973, effective April 8, 1973. On January 24, 1983, the Local Boundary Commission submitted a recommendation to the Alaska legislature for annexation of Eielson Air Force Base to the FNSB. That annexation took effect under the provisions of Article X, Section 12 of the State Constitution on March 13, 1983. There have been no boundary changes to the Fairbanks North Star Borough since March 13, 1983.



and the system of transportation, and communication throughout the FNSB. These same factors apply to the present consolidation proposal under 3 AAC 110.045(a). There is no evidence in this proceeding that these factors have changed significantly over the past four years. Consequently, DCED concludes that the Commission's 1996 determination remains valid today.

3 AAC 110.045(b) establishes the rebuttable presumption that the statutory standard at issue requires the presence of at least two communities within a borough. That presumption is clearly met in this case. The FNSB contains two city governments (Fairbanks and North Pole) each of which encompasses a separate community. In addition, nine "census designated places" (CDPs) have been identified in the FNSB by the U.S. Bureau of the Census. Those consist of College, Eielson AFB, Ester, Fox, Harding-Birch Lakes, Moose Creek, Pleasant Valley, Salcha, and Two Rivers. The following is a description of the characteristics of CDPs published by the Census Bureau.

The purpose of the CDP program is to identify and delineate boundaries for closely settled, named, unincorporated communities that generally contain a mixture of residential, commercial, and retail areas similar to those found in incorporated places of similar sizes. The intent is for a CDP to differ from an incorporated city, town, village, or borough⁴¹ only in regard to legal status and recognition within its respective state.

DCED recognizes that the Census Bureau's definition of CDPs is different from the legal definition of community adopted by the Local

Boundary Commission under 3 AAC 110.920. Therefore, it is possible that not all of the nine CDPs would be recognized as communities by the LBC. Nonetheless, the presumption of multiple communities in the proposed Municipality of Fairbanks is clearly met.

3 AAC 110.050(a) provides that the Local Boundary Commission will consider census enumerations and other relevant factors in determining whether the size and stability of the population is sufficient to operate a borough. The Alaska Department of Labor and Workforce Development estimates that the July 1, 2000 population of the FNSB was 83,814. The FNSB ranks as the second most populous borough in Alaska. It has 43% more residents than the Matanuska-Susitna Borough, the third most populous borough in Alaska. The population of the FNSB is nearly 84 times greater than the presumed minimum population for borough governments established under 3 AAC 110.050(b). Table 3 on the following page compares the July 1, 2000 population of the FNSB with that of other organized boroughs in Alaska.

DCED concludes from these factors that the population of the FNSB is certainly large enough to operate a borough government.

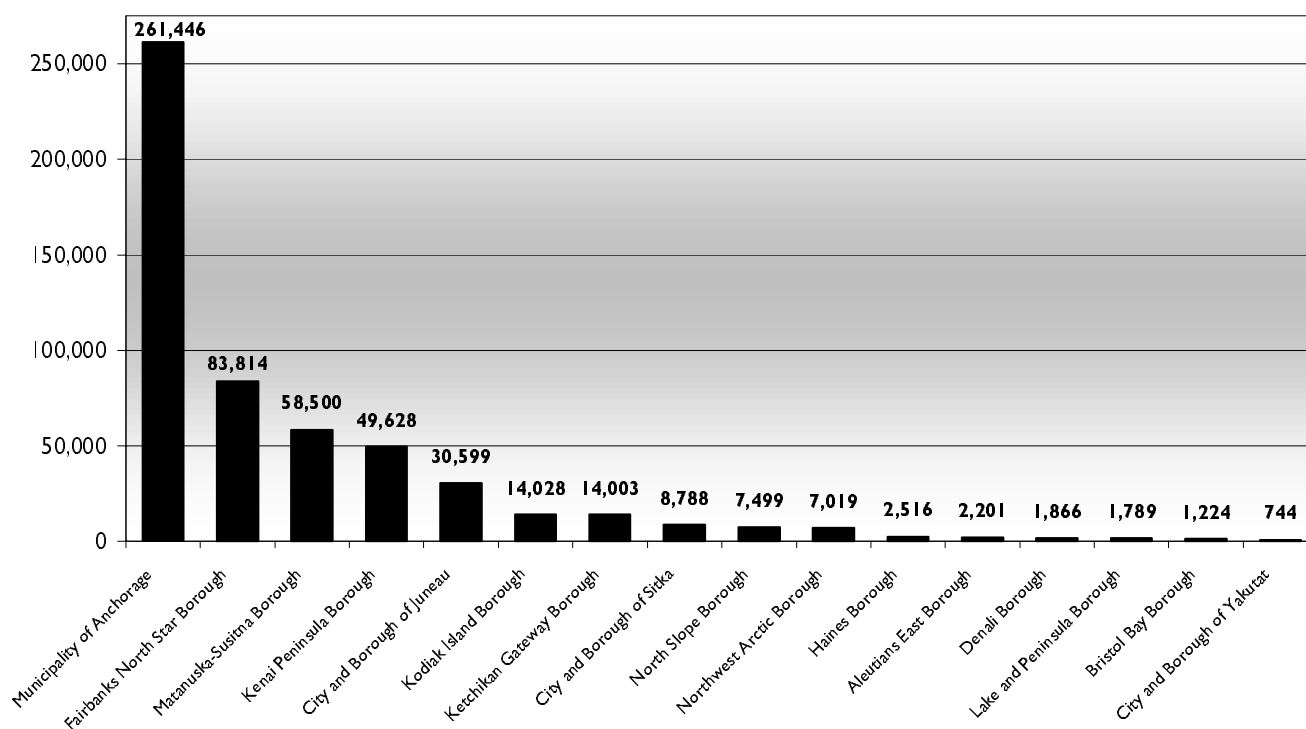
With respect to population stability, Table 4 on page 51 shows the population changes within the FNSB since 1990.

The population of the FNSB has grown 7.8% since 1990. The former Alaska Department of Labor projected in 1998 that the population of the FNSB would continue to show moderate

41 It is DCED's understanding that the term "borough" is used in the Census Bureau's definition in a general sense as a place organized for local government; it is not used in the sense as the term is applied to the borough form of municipal government in Alaska.



Table 3
Current Population of Alaska's 16 Organized Boroughs



growth over the ensuing two decades. A low-range scenario based on an annual average population growth rate of 0.54%, estimated that the FNSB would have 96,767 residents by 2018. A high-range scenario estimated an annual population growth rate of 0.94%, which would result in 104,533 residents in the FNSB by 2018. The historic and projected population data support a finding that the population of the FNSB is stable enough for borough government.

(3) DCED's Conclusions Concerning Population

Based on the foregoing analysis, DCED concludes that the proposed Municipality of Fairbanks has a population that is well interrelated and integrated in terms of its social, cultural, and economic activities. Additionally,

the population of the proposed consolidated borough is large and stable enough to operate the government. The standards set out in AS 29.05.031(a)(1), 3 AAC 110.045(a)-(b), and 3 AAC 110.050(a)-(b) are satisfied with regard to the proposed Municipality of Fairbanks.

2. Conformance of Boundaries to Natural Geography and Inclusion of Areas Necessary for Municipal Services.

(1) Views of the Parties

None of the respondents expressed the view that the existing FNSB fails to meet this standard.



AT A GLANCE

DCED'S VIEWS CONCERNING SATISFACTION OF THE BOUNDARY STANDARDS

The present boundaries of the FNSB, which have been in place for more than 17 years, satisfy the boundary standards for borough government.

set out in AS 29.05.031(a)(2) regarding conformance with natural geography and inclusion of areas that are needed for municipal services. The boundary factors listed in 3 AAC 110.060(a)

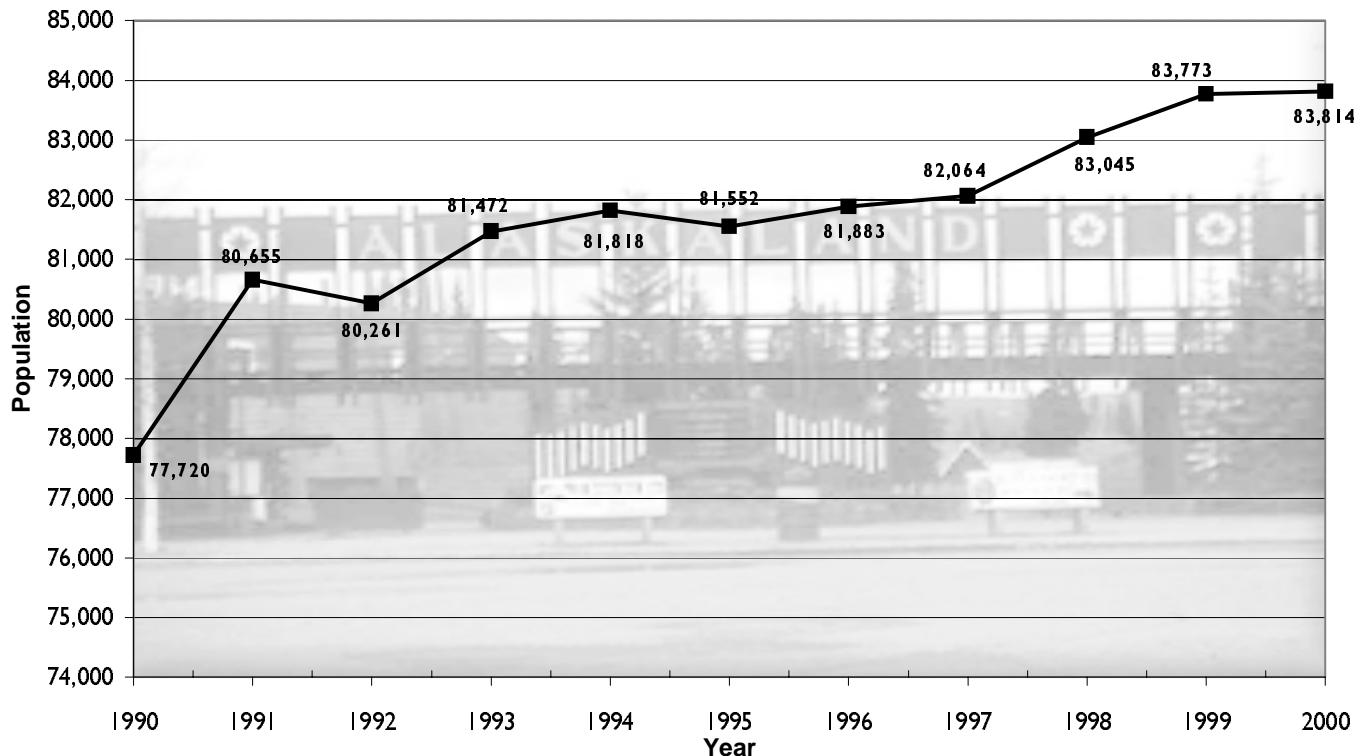
(2) DCED's Analysis

In the late 1980s and early 1990s, the Local Boundary Commission undertook an extensive review of the unorganized borough to determine model boundaries for prospective and existing organized boroughs. (See Department of Community and Regional Affairs, *Model Borough Boundaries*, revised 1997.) In setting model borough boundaries, the Local Boundary Commission considered the standard

were also considered by the Commission in the course of setting model boundaries.

3 AAC 110.060(b) requires consideration of model borough boundaries in this instance. The FNSB's present boundaries do not conform to its model boundaries established by the Local Boundary Commission on October 8, 1990. Those boundaries are shown on the following page.

Table 4
FNSB Population
1990 - 2000





The lack of conformity to model borough boundaries, however, is not necessarily an impediment to consolidation. In 1998, the LBC concluded as follows regarding such matters with respect to the proposal for consolidation of local governments in Haines:

The existing boundaries of the Haines Borough do not conform to the model boundaries of the Haines Borough as established by the Local Boundary Commission on May 8, 1992. The latter includes Klukwan and the City of Skagway. However, the Haines Borough is not the only organized borough in Alaska whose corporate boundaries do not conform to its model boundaries as defined by the Commission. Others consist of the Ketchikan Gateway Borough, the City and Borough of Juneau, the Denali Borough, and the Fairbanks North Star Borough.

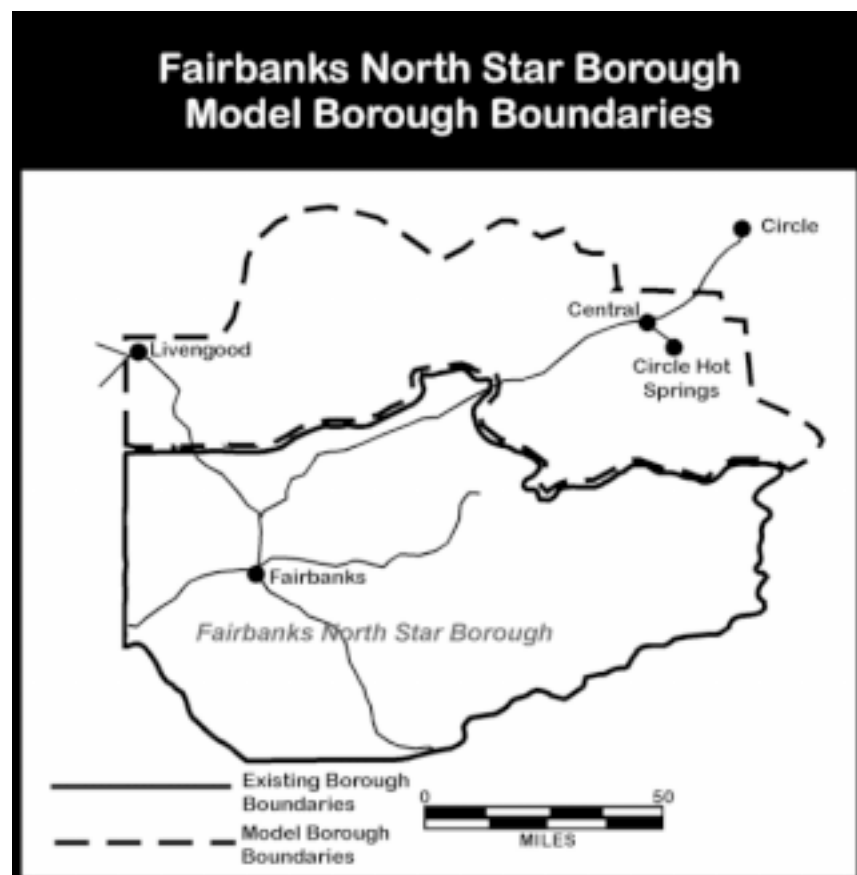
Additionally, there have been instances in which the Commission has approved petitions for borough incorporation and annexation with boundaries not fully extending to the model boundaries for the respective borough. In 1990, the Commission approved incorporation of the Denali Borough with boundaries not extending to full limits of its model boundaries. Additionally, the Commission approved annexation to the City and Borough of Juneau in 1990 without compelling the inclusion of all territory within its model boundaries.

The Commission finds that consolidation is a highly favorable development with respect to local government in Haines. The positive direction resulting from consolidation is more than sufficient to overcome shortcomings with respect to the model boundaries of the Haines Borough. In other words, the Commission recognizes that ideal municipal boundaries and governmental structure are goals which may not be achieved in

the near future, but toward which progress may be attained incrementally over time.

Any proposal to modify the boundaries of the Haines Borough in conjunction with the consolidation effort would be procedurally cumbersome. The issue of consolidation involves an areawide election among the residents of the Haines Borough whereas annexation would require either legislative review or a separate election just in the territory proposed for annexation. It is also apparent that any proposal to expand the boundaries of the Haines Borough would likely be controversial and involve existing communities whose residents have not yet requested extension of borough boundaries into their communities.

Local Boundary Commission, *Statement of Decision in the Matter of the March 31, 1998 Petition for Consolidation of the City of Haines and the Haines Borough*, August 21, 1998, p. 13. ("LBC III")





3 AAC 110.060(c) establishes a rebuttable presumption that proposed new boroughs will conform to existing regional educational attendance area boundaries. This provision is inapplicable to the pending consolidation proposal since the territory proposed for consolidation is entirely within an organized borough. The Commission reached the same conclusion with respect to the 1998 Haines consolidation proposal, which exhibited identical characteristics concerning this particular standard.

The presumption in the Commission's regulations at 19 AAC 10.060(c) that proposed borough boundaries must conform to existing regional educational attendance area boundaries does not apply in this instance since the area under consideration is wholly within an existing organized borough.

Ibid., p.12.

(3) DCED's Conclusions Concerning Boundary Standards

The territory proposed for consolidation conforms generally to natural geography and includes all area necessary for full development of municipal services. The fact that the boundaries of the proposed Municipality of Fairbanks deviate from its model borough boundaries is not an impediment to consolidation. DCED concludes from its analysis that the standards set out in AS 29.05.031(a)(2) and 3 AAC 110.060 are satisfied.

3. Resources Needed to Provide Municipal Services.

(1) Views of the Parties

The FNSB takes the position that the consolidation proposal fails to meet the statutory standards concerning the economy. Specifically, the FNSB states that:

Because the proposed consolidated Municipality would have the same boundaries as the existing Borough, it would meet most of the statutory incorporation standards. . . . However, the Petition does not satisfy the requirements of AS 29.05.031(a)(3), which requires the LBC to evaluate an area's economy. The LBC's regulations,

3 AAC 110.055, lists the four relevant factors to be considered in making this evaluation:

The economy of a proposed borough must include the human and financial resources necessary to provide essential borough services on an efficient, cost-effective level. In this regard, the commission will, in its discretion, consider relevant factors, including

(1) the reasonably anticipated functions of the proposed borough;

(2) the reasonably anticipated expenses of the proposed borough;

(3) the reasonably anticipated income of the proposed borough, and its ability to collect revenue;

(4) the feasibility and plausibility of the anticipated operating budget through the third full fiscal year of operation.

FNSB Brief, pp. 12-13. The Borough outlines its arguments that the economy standard is not met in its responsive brief on pages 13 through 29 and Appendix B. Principal issues and concerns expressed by the FNSB in this regard are summarized below:

- The proposed consolidated borough would lack adequate resources to fund nonareawide services. Presently, much of the estimated \$2.5 million in hotel taxes collected annually by the City of Fairbanks is used for economic development. The consolidation proposal, however, would convert the 8% hotel tax to an areawide tax. Areawide tax proceeds cannot be legally used to fund nonareawide services such as economic development.



- There is presently very little duplication of services between the City of Fairbanks and the FNSB. Consolidation will not result in reductions in the number of local government personnel. In fact, additional management staff for the Urban Service Area will be needed. Rather than saving the public \$2 million as claimed by the Petitioners, it is projected that consolidation will cost taxpayers \$2,074,421 in higher operating costs.
- In addition to the projected \$2,074,421 in increased operating costs, consolidation will carry significant transition costs. The first year, consolidation transition costs are estimated to be \$5,118,105. In the second and third years, it is projected that the consolidated borough will incur transition costs of \$486,369 and \$269,635 respectively.
- The projected income of the proposed consolidated borough would be severely restricted if voters approved the statewide initiative on November 7, 2000, to limit the authority of a municipality in Alaska to levy property taxes at a rate not to exceed 10 mills. If the initiative had been approved, there would have been very little flexibility to impose a property tax on the Urban Service Area.

Table 5 on the following page outlines the cost increases that the FNSB projects would result from a consolidated borough government.⁴²

The two correspondents in this proceeding also expressed concern over the Petitioners' projections that consolidation would result in

savings. Bonnie Williams, a member of the FNSB Assembly who offered written comments as her own personal views, echoed the concerns of the FNSB that consolidation would cost \$2 million. Bonnie Williams, letter of July 28, 2000, p. 1.

Additionally James E. Moody expressed the following views on the matter:

Most misleading is the statement that "consolidation will save over two million dollars annually..." Not a shred of evidence is presented to support this wild 'promise' – which has caught the attention of many who are taking up the banner for consolidation in the media. The statement by the petitioners should be likened to a (drunk) crying "Fire!!" in a crowded theater.

James Moody, letter of August 1, 2000, p. 2.

The City of Fairbanks takes the position that consolidation will result in no significant operational savings. Specifically, the City states that, "The reality is that with virtually no overlap in function, little if any reduction in operating cost can be expected." *City Brief*, p. 26. The City goes on to state:

The best indication of the future is the actual experience of other Alaska municipalities. The Unified City and Borough of Juneau and the Unified Municipality of Anchorage are most similar to the City of Fairbanks and the Fairbanks North Star Borough. The best way to measure the true cost of local government is examination of the total tax burden per capita (all taxes of any kind). The authoritative source book for this data is *Alaska Taxable*, a publication of the State Department of Community and Economic Development issued every year by the State Assessor.

42 *FNSB Brief*, Appendix B, p. 2; also Section 2. The listing above does not include offsetting costs that are shifted from one jurisdiction to another (e.g. \$1,042,369 in EMS costs shifted from the former City of Fairbanks to the nonareawide jurisdiction of the Municipality of Fairbanks). Neither does it include adjustments to account for funding of services through different sources of revenues (e.g., elimination of garbage tipping fees in the former City and imposition of taxes to pay

**Table 5**

Summary of Operating Costs that the FNSB Estimates will Increase if Consolidation Occurs

Projected Effect	Explanation
\$931,750	▪ annual cost to expand vehicle & equipment replacement program to the Urban Service Area
\$245,130	▪ 1.0 full time equivalent (FTE) additional director and 2.0 FTE additional computer support positions in the Computer Services Department
\$119,080	▪ 1.0 FTE safety and claims administrator and 1 secretary in the Finance Department (Risk Management)
\$113,600	▪ 1.0 FTE additional police chief for the Police Department
\$113,600	▪ 1.0 FTE additional fire chief for the Fire Department
\$99,885	▪ other net cost increases
\$99,365	▪ 0.35 FTE additional staff needed for Golden Heart Plaza
\$83,947	▪ 6 less City Council members, 1 less City mayor, 0.5 FTE less City Clerk's office position, 1.0 FTE less executive secretary, 5 additional service area board of supervisors, 1.0 FTE additional supervisor, 0.625 FTE additional secretary, 1.0 FTE additional cashier, 1.0 FTE additional collections clerk, and 1.0 FTE additional clerk typist for the Urban Service Area administration
\$68,022	▪ 0.5 FTE additional staff needed for cemeteries
\$64,510	▪ 1.1 FTE additional staff needed for records management
\$61,134	▪ 0.5 FTE additional purchasing employee and 0.5 general services clerk II in the General Services Department
\$53,802	▪ 0.5 additional FTE legal secretary and 0.5 additional FTE paralegal in the Law Department
\$48,000	▪ 0.5 FTE additional staff needed for health center consolidation
\$45,230	▪ 0.8 FTE additional mail clerk
\$43,995	▪ 1.0 additional FTE clerical position in the Mayor's office
\$29,540	▪ 0.625 FTE additional secretary in the Direct Services Department
\$14,010	▪ 0.5 FTE less City budget manager, 2.0 FTE less City senior accountants, 1.0 FTE less City accounting specialist, 1.0 FTE additional fund accountant, 1.0 accounting technician IV-payroll, 1.0 FTE accounting technician III-payroll/AP, and 0.5 accounting technician I-AP
\$11,729	▪ 0.2 FTE additional staff needed for administration
(\$11,729)	▪ 0.2 FTE less City Clerk's office position in the Borough Clerk's office (cemetery records management)
(\$11,729)	▪ 0.2 FTE less City Clerk's office position in the Mayor's office (liquor license administration)
(\$21,638)	▪ less City Clerk's office position in the Parks and Recreation Department (parks maintenance)
(\$26,031)	▪ 1.0 FTE less City CFO, 0.5 FTE less City budget manager, 0.9 FTE less City Clerk, 1.0 FTE additional tax & cash auditor, 1.0 FTE additional revenue/budget analyst, and 1.0 FTE cashier in the Finance Department (treasury & budget consolidation)
(\$48,000)	▪ adjustment to shift health center maintenance costs from former City to areawide costs
(\$52,781)	▪ 0.9 FTE less City Clerk's office position in the Borough Clerk's office (Clerk's records management)
\$2,074,421	TOTAL

Review of the 1999 data reveals that the total tax burden per capita in the City of Fairbanks is much lower than the average of the 20 municipalities with the highest per capita tax rate. For 1998, there were 57 other Alaskan municipalities with a higher tax cost per capita than the City of Fairbanks — Fairbanks didn't even make the first page of the table.

Ibid., p. 26.

The Interior Taxpayers' Association also disputed the claims of the Petitioners regarding overlapping services of the two existing governments as well as the Petitioners' claims concerning projected cost savings that would result from consolidation. *ITA Brief*, p. 1.

The Petitioners acknowledged in their reply brief that the original budget submitted in the



Petition was marginal. The Petitioners submitted a more detailed budget in their reply brief and also provided a comparison of their more detailed budget and the consolidated budget provided by the FNSB in its responsive brief.

The Petitioners respond in their reply brief to the concerns of the FNSB regarding economic development funding and bed taxes as follows:

The Carlson Center can continue to be funded by the Borough's bed tax under Consolidation.

The present city bed tax disposition raises another issue. Under the City tax cap, as hotel tax revenues rise, property taxes decrease. New hotels are being developed in the city and as hotel bed revenues go up, and dispersed to non-profit groups, the property taxes available for city operations decrease. The City of Fairbanks is slowly self-destructing under this scenario. The City Council should assure essential public safety issues, police, fire, streets and walks are attended to prior to giving blank checks to non-profit groups who, prior to the bed tax, provided volunteer funding and staffing.

Reply Brief, Sec. I, p. 3.

The Petitioners state as follows regarding the concerns of the FNSB with respect to the anticipated expenses and income of the proposed Municipality of Fairbanks:

The Borough correctly questions the Petitioners (sic) two page consolidated budget. The new 39-page City and Borough Consolidation Budget and Fiscal Comments submitted with the Petitioners (sic) Reply Brief addresses the several questions herein.

The Borough also correctly states that the City is currently understaffed by Borough standards as also addressed in the updated budget mentioned above.

The Consolidation Petition Transition Plan states the new assembly for the consolidated municipality **may** provide for an appointed or elected board to supervise the furnishing of special services in the new service area. (Emphasis in reply brief) The Petitioners have frequently referred to the Municipality of Anchorage wherein the Borough Mayor supervises the former City and Borough without an appointed or elected board. We would urge the new Municipality to follow other unified municipality's (sic) lead in borough management.

Reply Brief, Sec. I, p. 4.

The Petitioners state as follows regarding the concerns of the FNSB with respect to the feasibility and plausibility of the budget:

The Petitioners have submitted a new 39-page consolidation budget with their Responsive Briefs to the Local Boundary Commission. The Petitioners requested cooperation from the Fairbanks North Star Borough Mayor in developing the updated budget, but were denied cooperation since the Petitioners opposed extending the Public Notice period to December 15, 2000.⁴³

The Petitioners are also submitting with this Reply Brief, an attachment "Review of FNSB's Response Consolidation Budget by Petitioners for Consolidation of the City and Borough dated August 21, 2000".

The Local Boundary Commission should note that bureaucrats who oppose a proposal use whatever language they can to defeat the issue and that is precisely what the Borough administration is doing in this situation. The

43 FNSB officials indicate that they did not decline to cooperate with the Petitioners because the LBC had denied the FNSB's request for extension of the opportunity to file responsive briefs. Instead, the FNSB indicates that it declined to cooperate because the FNSB lacked the resources to prepare its responsive brief, provide assistance to the Petitioners, and carry out its other duties given the schedule in this proceeding.

**Table 6****Summary of Savings that Judi Slajer (on Petitioners' Behalf) Projects will result if Consolidation Occurs**

Projected Change	Explanation
(\$217,836)	Projected savings in the office of the Municipal Clerk
(\$199,373)	Projected savings in the Financial Services Department
(\$103,291)	Projected savings in the Computer Services Department
(\$83,735)	Projected savings in the Department of Administration
(\$25,930)	Projected savings in the Department of Law
(\$18,351)	Projected savings concerning elected officials
(\$1,384,100)	Reallocation of non-departmental functions ⁴⁴
\$277,694	Increase in the General Services Department expenses
\$1,119,699	Reallocation of Public Works Department expenses ⁴⁵
\$55,500	Reallocation of Emergency Operations Department expenses
The above effects result in total projected annual savings of \$579,723	

anticipated income, and the feasibility and plausibility of the anticipated operating budget of the proposed consolidated borough. Ms. Slajer, a resident of Fairbanks, served as the Chief Financial Officer of the FNSB from 1986 until she retired in 1997.

In the current proceeding, Ms. Slajer prepared a 39-page report entitled *A City and Borough Consolidation Budget and Fiscal Comments* that was included in the Petitioners' Reply Brief as

entire Responsive Brief could have been slanted on how Consolidation would benefit the Borough if Borough officials wanted the proposal to succeed. The Borough purposely left out all the pros and emphasized the cons. Vastly different than the positive attitude of elected and appointed officials from Haines and Ketchikan in their Consolidation proposals.

“Attachment A.” Ms. Slajer's report provides detailed and current projected expenditures for the proposed consolidated borough. The report projects that consolidation will result in a reduction of five staff and annual savings of \$579,723 as compared to the current combined operations of the City of Fairbanks and FNSB.

Reply Brief, Sec. I, p. 4.

The Petitioners enlisted the aid of Judith A. Slajer in responding to the Borough's comments and concerns regarding the reasonably anticipated expenses,

Appendix D of this report outlines the financial effects that Ms. Slajer believes are reasonable to expect from the proposed consolidated borough. Table 6 summarizes those projected financial effects.

44 Ms. Slajer notes on page 20 of Attachment A of the Petitioners' Reply Brief that the FNSB has a budget section termed “Non-Departmental” to provide for expenditures which cannot be attributed to any particular department. The City has a similar budget section named “General Account”. In reviewing the General Account of the City budget, Ms. Slajer found some expenditures to logically fit in a department's budget under the proposed consolidated borough. The above figure reflects such reallocation of expenditures. A reconciliation of the Non-Departmental budget is found in the Petitioners' Reply Brief, Attachment A, Appendix V and a reconciliation of the City's General Account is found in Appendix VI.

45 Ms. Slajer notes on page 16 of Attachment A of the Petitioners' Reply Brief that the combined expenditures of the City and Borough Public Works function were drawn from several areas of the City budget as well as the Public Works Department of the Borough. Several items which are Public Works expenditures shown in the City's General Account were transferred to this department. Several items, as shown in the Division detail, have been transferred elsewhere in this Consolidation Budget. A summary of the Public Works expenditures is provided in Table 13 on page 16 of Attachment A of the Petitioners' Reply Brief.



However, Ms. Slajer also acknowledged that consolidation would result in certain transition costs. She noted in this regard that:

. . . Transition costs fall into two categories, the cost of conversions and consolidating workspaces, systems and employees, and the cost of bringing equipment and facilities up to acceptable standards. Future transition decisions of the newly elected officials will have a major bearing on these costs. These transition costs would offset, and likely would exceed, any savings resulting from consolidation for two or more years. No estimates are made in this report of these potential costs.

Ibid., p. 5.

(2) DCED's Analysis

Regarding nonareawide funding for services.

Concerns of the respondent FNSB about adequacy of funding for nonareawide services center on the bed tax. The Borough notes that "hotel bed tax revenues collected within the City would become areawide revenue, no longer available for distribution as Economic Development dollars (a non-areawide power) within the new Urban Service Area." *FNSB Brief*, Appendix B, p. 1.

However, in DCED's view, certain aspects of the current bed tax arrangement are remarkable. The remarkable features of the bed tax operate

AT A GLANCE DCED'S VIEWS CONCERNING ADEQUACY OF RESOURCES

The Petitioners and respondents differ in the views of the financial impacts of consolidation. Such differences aside, the proposed Municipality of Fairbanks clearly has the human and financial resources needed to provide services and facilities.

to the significant disadvantage of FNSB residents who live outside the City of Fairbanks. The FNSB actually levies its 8% bed tax on an areawide basis. However, the FNSB exempts transactions that are subject to hotel taxes levied by cities within the Borough. The City of Fairbanks also levies an 8% bed tax. Thus, hotel transactions within the City of Fairbanks are exempt from the FNSB's bed tax. While technically an areawide levy, the FNSB's bed tax is, *in effect*, less than an areawide levy. Under the current arrangements, the Borough receives approximately \$1 million from the tax and the City receives approximately \$2.5 million from the tax.

The FNSB allocates its proceeds from the tax to pay for operation of the Carlson Activity Center, an areawide parks and recreation facility located within the City of Fairbanks. Residents of the City of Fairbanks receive a level of benefit from the Carlson Activity Center that is at least equal to that of other residents of the Borough.⁴⁶ However, in addition, citizens of the City of Fairbanks theoretically receive the exclusive benefit of the \$2.5 million proceeds from the City's 8% bed tax levy. Thus, FNSB citizens living outside the City of Fairbanks

46 Because the Carlson Activity Center is located within the corporate boundaries of the City of Fairbanks, it is most conveniently located for residents of the City of Fairbanks.



receive significantly less benefit from the Borough's areawide bed tax compared to citizens of the City of Fairbanks.⁴⁷

Utilizing the proceeds of the areawide bed tax exclusively for areawide functions as proposed by the consolidation petition would appear to promote greater equity among taxpayers of the proposed Municipality of Fairbanks.

One means of addressing the respondents' concerns suggested by the Petitioners would be to authorize the Municipality of Fairbanks to exercise economic development on an areawide basis. *Reply Brief, Attachment A, p. 6.* The pending Petition could be amended by the Local Boundary Commission to provide for that alternative.

Although DCED favors the approach outlined in the preceding paragraph, another option to address the respondents' concerns would be to replicate the current bed tax structure in the proposed consolidated borough. Specifically, the petition could be amended to provide for economic development to be exercised on a service area basis within the proposed Urban Service Area just as it is now exercised within the City of Fairbanks. Further, the bed tax proposition could be amended to maintain the current areawide levy, maintain the current exemption, and provide for the levy of the tax on a service area basis within the Urban Service Area.

Regarding adequacy of revenues to pay expenses.

As noted earlier, the Petitioners originally asserted that, "it is estimated consolidation of the two governments would save over two million dollars annually through reduction of elected, executive and other duplicative positions." *Petition, Ex. A, p. 1.*

In contrast, the FNSB asserts in its responsive brief that "consolidation, instead of saving the public \$2,000,000, would cost taxpayers \$2,074,421."⁴⁸ That figure is the estimated increase in annual operating costs for the consolidated borough. In addition, the FNSB estimates that the consolidated borough will incur transitional costs amounting to \$5,118,105 in the first year, \$486,369 in the second year, and \$269,635 in the third year. *FNSB Brief, Exhibit B, pp. 1-2.*

The \$2,074,421 cost increase projected by the FNSB amounts to approximately 1.9% of the combined current budgets of the City of Fairbanks and FNSB (excluding service areas). The \$579,723 savings projected by the Petitioners amounts to about one-half of one percent of the combined current budgets of the City of Fairbanks and FNSB (excluding service areas). Both the FNSB and Petitioners consider their respective estimates to be conservative.

47 *FNSB Reply Brief, Appendix B, Section 7*, estimates FNSB hotel tax proceeds at \$1,014,000. If allocated equally among the 83,814 residents of the FNSB, each would receive the equivalent benefit of \$12.10 in government services ($\$1,014,000/83,814 = \12.098). City of Fairbanks hotel tax proceeds are estimated at \$2,500,169. If those proceeds are allocated equally among the 31,423 residents of the City of Fairbanks, each would receive the equivalent benefit of \$79.56 in government services ($\$2,500,169/31,423 = \79.564). Thus, residents of the City of Fairbanks receive \$91.66 ($\$12.10 + \79.56) in government services from the hotel tax – more than 7.5 times the per capita benefit (\$12.10) for FNSB citizens outside the City of Fairbanks.

48 That figure includes \$1,900,094 in economic development funding.



As noted previously, the City of Fairbanks asserts that the best way to predict the financial effects of consolidation is to compare the tax burdens of various municipalities, particularly municipalities that have already combined. The City stresses in that regard that “the total tax burden per capita for residents of the City – combined City and Borough taxes – is virtually identical to that of the Municipality of Anchorage the largest unified municipality in the State where one would expect the greatest economy of scale.” *City Brief*, p. 27.

The City’s comments fail to recognize that there are significant differences in the levels of service provided by the Municipality of Anchorage as compared to the FNSB and City of Fairbanks. For example, fewer than 40% of the residents of the FNSB receive municipal police service (those living in the City of Fairbanks and the City of North Pole) whereas nearly all of the residents of the Municipality of Anchorage receive municipal police service.⁴⁹ Moreover, the City’s presumption concerning economies of scale is inconsistent with conclusions reached in a study by the Advisory Commission on Intergovernmental Relations (ACIR). The ACIR study concluded that municipal governments the size of Anchorage experience diminishing returns from consolidation which result in major diseconomies of scale. Joseph F. Zimmerman,

“The law of diminishing returns, however, applies as size exceeds 250,000, resulting in major diseconomies of scale.”

Joseph F. Zimmerman

Professor of Political Science at the State University of New York at Albany, addressed the ACIR study and the difficulty in measuring financial impacts of consolidation as follows:

Governmental officials and citizens interested in the effectiveness of city-county consolidation usually are most concerned with the achievement of economies resulting from greater scale, specialization, and elimination of any duplication that had existed. Unfortunately, reliable comparative statistical data are lacking.

A major reason for the lack of such data is the absence of cost accounting systems in most local governments. Unless such systems existed in all the local governments prior to consolidation and in the consolidated government, it is impossible to measure

with any degree of precision the achievement of economies.

Although unit costs tend to decrease with an increase in output, diseconomies of scale may be encountered as output continues to increase. Significantly, a study by the Advisory Commission on Intergovernmental Relations (ACIR) concluded that no significant economies or diseconomies of scale are associated with a city in the population range of 25,000 to 250,000. The law of diminishing returns, however, applies as size exceeds 250,000, resulting in major diseconomies of scale. The largest diseconomies in the ACIR study were associated with police protection.

The ACIR study suggests that consolidation of cities and the county to produce a new government serving a population in excess of

⁴⁹ The Municipality of Anchorage provides police services through a service area that encompasses all communities except for Girdwood and the tiny settlements of Bird and Indian.



250,000 may not produce any economies of scale. Unit costs, of course, may be lowered somewhat by the elimination of duplication, better utilization of personnel and equipment, and mass purchasing. Furthermore, consolidation may create a “climate of change” which facilitates the introduction of modern management techniques designed to increase the efficiency of service production and distribution.

A consolidated city-county will not necessarily be parsimonious in spending public funds. Inflation obviously will continue to exert an upward pressure on spending. More importantly, capital spending is apt to increase significantly as antiquated and inadequate facilities in the former central city are replaced and additional urban type services are extended beyond its former boundaries. A common reason advanced in favor of consolidation is the making of additional resources available to meet the pressing capital needs of the central city, which often are the product of years of neglect, and the growing needs of the remainder of the county for facilities and services.

The limitations of available statistical data must be fully recognized. The use of raw tax rate data prior to and subsequent to the consolidation to measure its effectiveness should be suspect. A decline in the total property tax rate may be attributable to a number of factors, including the raising of assessments, levying of new service charges, federal revenue sharing, and increased federal and state grants-in-aid.

A low tax rate, furthermore, tells us little about the quality of the services provided or the efficiency of their provision. A low rate, for example, may mean that a community is

efficiently administered or it may mean that citizens do not wish or are unable to allocate sufficient resources to support a high level of services. Conversely, a high per capita direct tax does not necessarily suggest administrative inefficiencies as high per capita costs may result from more and higher quality services.

National Association of Counties, *Consolidation: Partial or Total*, 1973, preface.

Vic Fischer and Thomas Morehouse, experts in Alaska local government, made similar observations in 1971.

The experience of local government reorganization elsewhere amply demonstrates that expected economies of structural reform are almost always elusive and often unmeasurable. Whatever the structure of local government, expenditures are rising because of the pressures of population and economic growth and the demands from the community for more and better local services. The major problems of local reformers are in fact political rather than technical. Reformers may nonetheless be required to answer the “right”

technical questions, particularly those concerning the prospective incidences and costs of change. . .

. . . Juneau area voters have most clearly achieved certain “efficiency” objectives by eliminating duplicative governmental overhead. The longer term question is whether they have also taken an effective step toward “unified” local government, given the divisions that still exist, albeit in new and perhaps more tractable form. Local voters and officials in other parts of the state will undoubtedly be influenced by developments in Juneau.

Morehouse and Fischer, *supra*, pp. 106-107.

“Juneau area voters have most clearly achieved certain ‘efficiency’ objectives by eliminating duplicative governmental overhead.”

Thomas Morehouse and Victor Fisher



Tax Cap Initiative

DCED agrees with the FNSB that the projected income of the proposed Municipality of Fairbanks would have been seriously affected had voters approved the statewide initiative to limit the authority of a municipality in Alaska to levy property taxes at a rate not to exceed 10 mills. That concern no longer exists, however, since voters rejected the initiative by a margin of better than two to one.⁵⁰

Transition Costs

The Borough projects that consolidation will have transition costs amounting to \$5,118,105 in the first year, \$486,369 in the second year, and \$269,635 in the third year. *FNSB Brief*, Exhibit B, pp. 1-2. The Petitioners acknowledge that there will be transition costs, but offer no specific estimate of such. As noted previously, Ms. Slajer indicated that “transition costs would offset, and likely would exceed, any savings resulting from consolidation for two or more years.” Given the Petitioners’ projection of annual savings from consolidation (\$579,723), one can infer that Ms. Slajer believes that transition costs will likely amount to at least \$1,159,446 (2 X \$579,723).

If the consolidation proposal is approved by the Local Boundary Commission, the financial effects of consolidation are certain to be of keen interest to the voters. However, the standard at issue does not require the Local Boundary Commission to determine whether costs associated with a consolidated borough government in Fairbanks are likely to decrease

as the Petitioners assert or increase as the FNSB claims. Rather, the standard necessitates a determination only whether the proposed consolidated borough has the “human and financial resources necessary to provide essential borough services on an efficient, cost-effective level.” Factors set out in 3 AAC 110.055 that are relevant to the financial resources aspect of the statutory standard include the anticipated functions, expenses, and income of the proposed borough, along with the feasibility and plausibility of the proposed budget. The extensive record in this proceeding relating the anticipated functions, expenses, and income of the proposed borough supports a conclusion that the standard is met.

Another factor set out in 3 AAC 110.055 concerns property valuations. The current per capita value of Alaska’s 16 organized boroughs ranges from a high of \$1,126,597 to a low of \$38,013. The median figure is \$67,463; the mean among all sixteen organized boroughs is \$85,104. The highest-ranking borough has an extraordinary per capita value. If the highest and lowest ranking boroughs are excluded, the average among the remaining fourteen organized boroughs in Alaska drops just below the median to \$66,419.

The FNSB ranks twelfth among the sixteen organized boroughs in terms of per capita values. At \$57,782, the per capita value of taxable property in the FNSB is 14.4% below the median figure for all organized boroughs in Alaska, and 13.0% below the average of the fourteen boroughs in the middle range. Table 7 on the following page compares all sixteen organized boroughs in Alaska.

50 December 5, 2000 official results indicate that 80,276 citizens voted in favor of the initiative (29.3%) while 193,760 (70.7%) voted against the initiative.



The per capita value of taxable property in the City of Fairbanks is \$43,800. The comparable figure for the remainder of the FNSB is 51.4% higher at \$66,292.

Figures for the per capita value of taxable property in city governments exist only for 76 of Alaska's 145 cities. They range from a high of \$236,844 to a low of \$4,765. The median is \$35,290; the mean is \$61,522. If the five highest and lowest ranking cities are excluded, the mean drops to \$54,426. The per capita value of taxable property in the City of Fairbanks is 28.8% less than the average of all 76 cities for which figures exist; it is also 19.5% less than the

average of the middle 66 cities for which data are available.

Table 8 on the following page lists the per capita values for the FNSB, City of Fairbanks, and that portion of the FNSB outside of the City of Fairbanks. Comparisons are made to data concerning other organized boroughs and cities in Alaska.

While the per capita assessed values of the FNSB and the City of Fairbanks fall below the average of their counterparts in other parts of Alaska, they still have substantial financial resources. Here again, the fact that both local governments have successfully operated for

decades buttresses the view that property valuations in the FNSB are adequate to meet the statutory standard regarding financial resources is satisfied.

Another fundamental factor set out in 3 AAC 110.055 concerning the financial capacity of a region is personal income. In 1998, per capita personal income in Alaska's sixteen organized boroughs ranged from a high of \$43,439 to a low of \$18,419. The median figure for Alaska's sixteen organized boroughs was \$27,916. The 1998 per capita personal income of the FNSB was \$25,341. That figure is \$2,575 or 9.2% less than the median figure. The FNSB ranked tenth among the sixteen organized boroughs. Among all regions in Alaska (sixteen organized boroughs and eleven census areas in the unorganized borough) the FNSB ranked thirteenth.

Table 7
Per Capita Values of Alaska's 16 Organized Boroughs

Borough	2000 Full Value	1999 Population	Per Capita Value
North Slope Borough	\$10,851,387,110	9,632	\$1,126,597
Bristol Bay Borough	\$204,802,200	1,258	\$162,800
Kenai Peninsula Borough	\$4,246,869,760	48,952	\$86,756
City & Borough of Juneau	\$2,632,035,700	30,852	\$85,312
Haines Borough	\$204,022,700	2,475	\$82,433
Ketchikan Gateway Borough	\$1,116,923,700	13,961	\$80,003
City & Borough of Sitka	\$658,298,100	8,681	\$75,832
Kodiak Island Borough	\$977,967,800	13,989	\$69,910
Denali Borough	\$121,643,100	1,871	\$65,015
Municipality of Anchorage	\$16,573,238,790	259,391	\$63,893
City & Borough of Yakutat	\$44,561,300	729	\$61,127
Fairbanks North Star Borough	\$4,840,563,260	83,773	\$57,782
Matanuska-Susitna Borough	\$3,256,885,340	57,288	\$56,851
Northwest Arctic Borough	\$381,186,000	6,873	\$55,461
Aleutians East Borough	\$97,167,900	2,225	\$43,671
Lake & Peninsula Borough	\$69,030,900	1,816	\$38,013

Source: Steve Van Sant, State Assessor, DCED



Table 9 on the following page shows the 1998 per capita incomes within the sixteen organized boroughs and eleven census areas in Alaska's unorganized borough.

While the 1998 per capita personal income of the FNSB is 9.2% less than the median figure for all organized boroughs in Alaska, FNSB residents still enjoy a substantial economy. Yet again, since the two local governments in question have successfully operated for a lengthy period, the per capita personal income of their residents supports the conclusion that the statutory standard regarding financial resources is satisfied.

Two factors listed in 3 AAC 110.055 relate to the human resources aspect of the standard at issue. The first concerns whether there is a sufficient availability of employable people to provide essential borough services. The second factor relates to the commitment and interest of the population in sustaining a borough government. Given that the FNSB has operated successfully for nearly 37 years and the City of Fairbanks has operated effectively for 97 years, it is reasonable to conclude that local residents have both the human resources and commitment to operate a consolidated borough government.

(3) DCED's Conclusions Concerning Resources Standards

The Petitioners project that operating costs of the proposed consolidated borough will decrease by approximately \$580,000 annually while the FNSB predicts that such costs will increase by slightly more than \$2 million annually. In addition to impacts on operating costs, both the Petitioners and the FNSB agree that there will be one-time transition costs. The FNSB estimates that transition costs during the first three years will total nearly \$6 million. The Petitioners offer no specific estimate, but implicitly suggest that the figure will be more on the order of \$1 million.

The financial effects of consolidation are difficult to predict with accuracy. Clearly, policy decisions that would be made by the assembly for the consolidated borough would have influence regarding the financial effects of consolidation. The few other areas of Alaska that have combined local governments have described the transition process as difficult. In the long-term, however, all consider it to have been worth the struggle. (See footnote 53, *infra*.)

While the issue of financial impacts of consolidation is expected to be of great interest

to local citizens, the standard at issue does not require the Local Boundary Commission to make a determination on that question. Rather, the Commission must determine whether the proposed consolidated

Table 8

Per Capita Values

Average of all organized boroughs	\$85,104
Average all boroughs, <i>excluding</i> highest and lowest ranked boroughs	\$66,419
FNSB, <i>excluding</i> City of Fairbanks	\$66,292
Average of 76 Cities for which data exist	\$61,522
FNSB	\$57,782
Average of cities for which data exist, <i>excluding</i> 5 highest and 5 lowest ranked cities	\$54,426
City of Fairbanks	\$43,800



borough has the human and financial resources to operate. The determination concerning financial resources will be based on consideration of factors deemed relevant by the Commission such as proposed functions, expenses, and income of the proposed borough; property valuations, and personal income. The determination concerning human resources is to be based on relevant factors such as the availability of skilled workers to operate a consolidated borough and the commitment of local residents to sustain a consolidated government. Analysis in this section, particularly the fact that the FNSB has successfully operated for nearly 37 years coupled with the limited reorganization inherent in the Fairbanks

consolidation proposal, leads DCED to conclude that the standards set out in AS 29.05.031(a)(3) and 3 AAC 110.055 are satisfied.

To address previously noted concerns expressed by respondents regarding non-

Table 9**1998 Per Capita Personal Income**

Borough or Census Area	1998 Per Capita Personal Income
Bristol Bay Borough	\$43,439
City and Borough of Juneau	\$33,516
Municipality of Anchorage	\$32,659
Denali Borough	\$32,152
Ketchikan Gateway Borough	\$31,803
Haines Borough	\$30,059
North Slope Borough	\$29,271
City and Borough of Sitka	\$28,480
Aleutians West Census Area	\$28,356
Valdez-Cordova Census Area	\$28,256
City and Borough of Yakutat	\$27,352
Wrangell-Petersburg Census Area	\$25,983
Fairbanks North Star Borough	\$25,341
Kenai Peninsula Borough	\$25,120
Dillingham Census Area	\$25,046
Skagway-Hoonah-Angoon Census Area	\$24,086
Kodiak Island Borough	\$24,166
Aleutians East Borough	\$24,069
Southeast Fairbanks Census Area	\$21,614
Northwest Arctic Borough	\$20,700
Nome Census Area	\$20,508
Matanuska-Susitna Borough	\$18,752
Lake and Peninsula Borough	\$18,419
Prince of Wales – Outer Ketchikan Census Area	\$18,278
Yukon-Koyukuk Census Area	\$18,005
Bethel Census Area	\$17,524
Wade Hampton Census Area	\$12,684
Source: U.S. Commerce Department, Bureau of Economic Analysis	

areawide funding for economic development, DCED recommends that the Local Boundary Commission consider amending the pending consolidation petition to provide for the areawide exercise of economic development powers.



4. Communication and Exchange Necessary for Integrated Borough Government.

(1) Views of the Parties

The parties in this proceeding express no concerns over this particular standard.

AS 29.05.031(a)(4) requires that land, water, and air transportation facilities allow the communication and exchange necessary for the development of integrated borough government. 3 AAC 110.045(c) lists a number of factors that may be considered by the Local Boundary Commission. These include transportation schedules and costs, geographic and climatic impediments, telephonic facilities, and public electronic media. Additionally, 3 AAC 110.045(d) establishes the rebuttable presumption that all communities within the proposed consolidated borough must be connected by roadway or air service.

(2) DCED's Analysis

In the previously noted 1996 proceedings for detachment of territory from the FNSB, the Commission noted as follows:

Borough incorporation standards require that various forms of transportation allow the communication and exchange necessary for the development of integrated borough government. Again, the existing FNSB is extremely integrated in terms of transportation.

LBC II, *supra*, p. 12. Several other similar references appear in the Commission's decisional statement concerning the 1996 proceeding. (*Ibid.*, pages 7, 9, and other portions of 12.)

The record in this proceeding lacks any evidence that circumstances have changed since the Commission concluded in 1996 that the FNSB is "extremely integrated in terms of transportation."

(3) DCED's Conclusions Concerning the Communications and Exchange Standards

Based on the foregoing brief discussion, DCED concludes that the proposed Municipality of Fairbanks has the facilities to allow the communication and exchange necessary for the development of integrated borough government. Thus, in DCED's view, the standards set out in AS 29.05.031(a)(4), 3 AAC 110.045(c), and 3 AAC 110.045(d) are satisfied.

5. Borough Classification.

(1) Views of the Parties

AS 29.06.090(a) prohibits the formation of a third class borough through consolidation. The Petitioners have proposed the creation of a new second class borough. Although respondents expressed concern that the pending consolidation would eliminate home rule status for matters governed by the City of Fairbanks, the consolidation petition does not propose to form a third class borough.

(2) DCED's Analysis and Conclusion

Based on the simple facts noted above, it is evident that the standard set out in AS 29.06.090(a) concerning permissible borough classifications is satisfied by the pending proposal.

6. Best Interests of the State.

(1) Views of the Parties

In order to approve any consolidation proposal, AS 29.06.130(a) requires the Local Boundary Commission to determine that the proposal serves the best interests of the state. The Commission has yet to adopt regulations interpreting and implementing that statutory



provision. However, it has proposed the adoption of the following provisions concerning borough incorporation.

Proposed 3 AAC 110.065 BEST INTERESTS OF STATE. In determining whether incorporation of a borough is in the best interests of the state under AS 29.05.100(a), the commission will, in its discretion, consider relevant factors, including whether incorporation

(1) promotes maximum local self-government;

(2) promotes a minimum number of local government units;

(3) will relieve the state government of the responsibility of providing local services; and

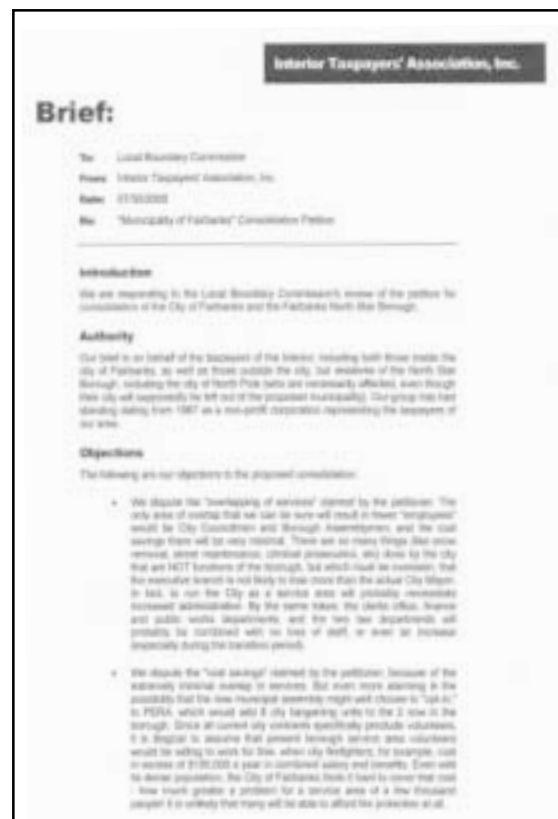
(4) is reasonably likely to expose the state government to unusual and substantial risks as the prospective successor to the borough in the event of its dissolution. standards for borough.

The City of Fairbanks takes the position that the pending consolidation is not in the best interests of the State. In support of its conclusion, the City again refers to social, cultural, and philosophical differences between the area within the City of Fairbanks and other parts of the FNSB. *City Brief*, pp. 19 – 20. In further support of its arguments, the City notes that voters in the region have rejected previous efforts to combine local governments. The City also notes that it has a policy of offering annexation only to areas that desire it, and while the LBC has encouraged the City to take a more comprehensive approach to annexation, it did not advocate dissolution of the City. *Ibid.*, pp. 20-21.

The Interior Taxpayers' Association (ITA) objects to the proposal to form a general law borough through consolidation. It also expresses concern that the pending consolidation proposal does not include the City of North Pole. Specifically, ITA states:

On behalf of all taxpayers, we object to the lack of a charter for the new municipality. It is the city charter with its citizen-initiated tax cap that has kept taxes low in the city, which presently has (and has had for many years) minimal debt. The borough, on the other hand, has much debt and a tax cap that must be renewed every two years. A lot is being asked of city citizens to give up their 40 year old charter for a municipality that cannot even guarantee them a voice in its government (assembly members will be chosen at large).

We respectfully remind the commission that the new municipality will not include the city of North Pole as a service area. If the purpose of consolidation is to combine governmental units, than we do not understand the reasoning that keeps North Pole as an island in the borough - a home rule city (with charter) - while Fairbanks is forced to become a service area. Considering the life styles in the three areas, it would seem to us that North Pole has more in common with the borough, being much more rural in nature





than the City of Fairbanks. We are not saying that North Pole should be forced into consolidation with the borough—just that it makes more sense than forcing a merger of such disparate areas as the present petition attempts to do.

Correspondent James Moody also questioned the exclusion of the City of North Pole from the consolidation proposal. James Moody, *Ibid.*, p. 4.

(2) DCED's Analysis

While the previously noted proposed regulations concerning the best interests of the state are not formally in place, they do provide unofficial guidelines for analysis of the interests of the state. Of particular relevance here are the factors relating to the constitutional principles concerning maximum local self-government and a minimum number of local government units. Those topics were examined extensively in Part A-I of this chapter. DCED's conclusions reached in that regard are reiterated below:

First and foremost, maximum local self-government is achieved through the extension of city or borough government to an area previously without municipal status. The Constitutional Convention Delegates envisioned that home rule would provide the highest form of local self-government. However, the judiciary and legislature have eroded aspects of the powers of home rule municipalities in Alaska. In contrast, the judiciary and legislature have significantly enhanced the powers of general law municipalities in Alaska. Today, general law municipalities can reasonably be described as having home rule-like powers. Residents of the City of Fairbanks receive essential services from both forms of government (home rule and general law), and seem to be content with either. The Petitioners' decision to propose a second class consolidated borough is fully defensible in terms of the limited resources available to the sponsors and on the grounds that citizens of the

greater Fairbanks area are likely to prefer to deal with change incrementally and through democratically elected representatives. Therefore, DCED concludes that the instant consolidation proposal serves the constitutional principle of maximum local self-government.

While the pending consolidation proposal will not reduce the number of local government units in the greater Fairbanks area, it will reduce the number of *local governments* serving that area. The founders "viewed the long-term relationships between the borough and the city as a gradual evolution to unified government". The pending consolidation proposal is a major step in that evolutionary process. The founders also considered "[a]bolition of cities and their reconstitution as urban service areas under the borough" to be one way to achieve minimum numbers of local governments. The pending consolidation proposal would achieve that result with respect to the City of Fairbanks. Lastly, the Alaska Supreme Court considers unification in which city governments are replaced with borough service areas as being "consistent with the purpose expressed in article X, section 1 of minimizing the number of local government units." Again, the pending consolidation would achieve that end. Lastly, constitutional expert Victor Fischer considers the Ketchikan consolidation application – a proposal with identical fundamental characteristics relating to the issue at hand – to meet the constitutional standard at issue. Therefore, DCED concludes that the proposal before the Commission for the consolidation of certain local governments in the greater Fairbanks area serves the minimum of local government units clause found in Article X, § 1 of Alaska's constitution.

The concerns of the ITA regarding the lack of home rule status for the proposed consolidated borough were addressed to a large extent in the earlier analysis regarding maximum local self-government. Again, it is noteworthy that the initial classification of the proposed borough would be subject to change. If voters wish to convey home rule status upon the



borough, they would be free to do so. As also noted previously, had the Petitioners attempted to consolidate as a home rule borough in the current proceeding, it would have likely added substantially to the complexities and controversy regarding the consolidation proposal.

The decision to retain the current classification for the proposed consolidated borough was presumably a very deliberate judgment on the part of the Petitioners. They expressly recognized that voters rejected unification in 1973 and did so again fourteen years later in 1987. Fourteen years after the latest rejection, the Petitioners anticipate that voters might approve a different approach.

Unification, which was tried unsuccessfully twice before dictates a particular structure for the borough government. A unified government must be a home rule government and it must result in the elimination of all city governments within the resulting borough's boundaries. In contrast to unification, consolidation is more flexible. The resulting consolidated borough may be, but is not required to be a home rule borough. Further, all cities may be, but are not required to be included in a consolidation.

The Petitioners intentionally avoided sweeping changes to the current structure of local government in their pending proposal. The proposed changes are limited largely to the dissolution of the City and its reconstitution as a multi-purpose service area of the

consolidated borough. The Petitioners seem to have clearly adopted the philosophy that further refinements to the structure of local government should be made incrementally as local officials and citizens deem appropriate. This appears to have been a deliberate political judgement on the part of the Petitioners.

A few months after the Fairbanks consolidation proposal was filed, the City of Ketchikan filed a petition for consolidation of the City of Ketchikan and the Ketchikan Gateway Borough. As is the case with the Fairbanks proposal, the Ketchikan consolidation proposal excludes one of two city governments within the borough.⁵¹

Vic Fischer, former Alaska Constitutional Convention delegate, was retained by the Ketchikan Gateway Borough to review the City of Ketchikan's proposal. It is noteworthy that Mr. Fischer concluded as follows with respect to the Ketchikan proposal:



Vic Fischer

... it is my opinion that the City's petition clearly meets the requirements of state law and regulations governing municipal consolidation. The state constitution and regulations favor maximum local self-government with a minimum of local government units, and a Ketchikan city-borough consolidation would further that goal. Other fundamental state criteria are based on meeting standards for borough incorporation, and since the Ketchikan Gateway Borough

already exists, those standards are essentially met.

Fischer II, *supra*, p. I.

51 The Ketchikan consolidation petition proposes to form a home rule borough through consolidation.



(3) DCED's Conclusion Concerning Best Interests of the State

The Petitioners' decision to structure the Fairbanks consolidation proposal in the particular fashion chosen was based on political decisions. That decision serves the political interests of the State in that it promotes constitutional policies favoring minimum numbers of local governments. Whether the Fairbanks consolidation proposal serves the political interests of the greater Fairbanks area can best be determined by a vote of its citizens.

Based on its analysis of this issue, DCED concludes that the pending proposal for consolidation of the City of Fairbanks and the FNSB serves the best interests of the state as outlined in proposed 3 AAC 110.065.

Part C. Whether the Consolidation Proposal Satisfies Other Applicable Regulatory Provisions for City/Borough Consolidation

The regulatory standards concerning city/borough consolidation set out in 3 AAC 110.045 – 3 AAC 110.060 and proposed 3 AAC 110.065 were addressed in the Section B of this chapter. However, there are two other principal regulatory provisions that apply to the pending consolidation proposal. Those relate to transition planning (3 AAC 110.900) and whether the consolidation proposal would deny any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin (3 AAC 110.910).

Those regulatory provisions are addressed below:

1. Transition Plan.

(1) Views of the Parties

The FNSB takes the position that, "Contrary to the requirement of 3 AAC 110.900(a), the petition does not provide a practical plan demonstrating a transition of existing services to be performed by the new government." *FNSB Brief*, p. 31. The following summarizes flaws perceived by FNSB with regard to the Petitioners' transition plan.

- Provisions concerning transition of existing FNSB and City ordinances do not comply with AS 29.06.160.
- The proposal to exempt the City's permanent fund from transfer to the consolidated borough is contrary to law.
- It would inequitable for the new Municipality to succeed to the City's liabilities, capital needs, retirement obligations, etc., while most of the current City revenues and the permanent fund become an asset of the Urban Service Area.
- Contrary to statements in the transition plan, consolidation will alter benefits for employees of the City or FNSB. Currently, City employees do not participate in the Social Security program whereas FNSB employees, including school district employees, do. Consolidation would either uniformly extend or eliminate Social Security coverage for all employees of the Municipality of Fairbanks.
- Chaos will result from the application of eight different collective bargaining agreements to employees of the consolidated borough.
- The proposal for the new mayor to prepare an organization plan that will become law unless rejected by the Assembly conflicts with AS 29.25.010.



- Designations of initial Assembly terms is contrary to 6 AAC 27.160 and AS 29.05.120.
- Petitioners do not demonstrate capability to provide municipal services if the 10 mill initiative becomes law.
- Petitioners have not analyzed the effect of consolidation on the City and Borough tax caps.⁵²
- Petitioners have not adequately budgeted for the transition costs of consolidation.
- There is no showing that the boundaries of the proposed Urban Service Area are appropriate.

Additionally, the City and the ITA raise concerns about the future allocation of the City's permanent fund and the "Techite Pipe Proceeds." ITA indicates in that regard, "The City's Permanent Fund, regardless of the claims of the petitioners, will go to the new municipality (AS 29.06.150). . .

. . . The proceeds from the Techite Pipe settlement, which are considerable, will also be lost to the 'Urban Service Area' by the same law referenced above." *ITA Brief*, p. 2.

The following is a summary of the response of the Petitioners to the concerns raised by the FNSB over the transition plan.

- Regarding the concern over transition of existing ordinances and the organization plan, the transition plan states that "The new municipal assembly may adopt a new ordinance to address specific needs or conflicts".
- A trust, such as the proposal offered by the Petitioners in their reply, should be used to ensure that the City's Permanent Fund will be transferred for the use and benefit of the Urban Service Area.
- Regarding Social Security coverage, the new Municipality can apply for a new Social Security 218 agreement.
- The new Municipality has up to two years to resolve various labor issues. Such should not be overly difficult. Anchorage resolved far more serious labor issues surrounding unification of local governments in 1975.
- If the transition plan is incorrect in terms of the election of initial assembly members, the Local Boundary Commission should stipulate how the initial Assembly members are elected.
- The Petitioners did not feel it necessary to address the City and Borough Tax Caps since both municipalities have remained under the tax caps and the consolidation Petition's budget anticipates remaining under those tax caps.
- Transition costs have been addressed earlier in the reply brief.
- The consolidation Petitioners have used the existing City of Fairbanks boundaries for the new Urban Service Area and believe they are appropriate. The Borough's Responsive Brief has not shown otherwise.
- Transition can take up to two years and be as thrifty or expensive as dictated by Borough management. The unified communities of Juneau, Sitka, and Anchorage were able to accomplish merging local government without astronomical costs as projected by the Borough.

52 The FNSB anticipated in its July responsive brief that an initiative would appear on the October 2000 ballot to renew the existing FNSB tax cap set out in Sections 3.08.141 and 3.08.142 of the FNSB Code of Ordinances. Nanci Bolles, FNSB Deputy Clerk, advised DCED that the initiative was indeed placed before the voters at the most recent FNSB election where it was approved by nearly 56% of those voting on the matter.



(2) DCED's Analysis

By its very nature, consolidation of Alaska's second most populous borough government with the most populous city government in the state is certain to present a broad range of challenges and complications. Consider, for example, the following portrayal of the transition to a unified municipal government in Anchorage. The account was written two years after voters approved the restructuring of local government:

It is fair to characterize the post-unification period as starting with chaos, and working on through sorting out, resolution, and the onset of institutionalization. The pluses, which worked in the favor of the officials responsible for getting the new government going, included a well-conceived Charter which provided guidelines without unnecessary details and a group of competent, dedicated officials. The minuses included the inability or unwillingness of some employees and officials to accept the new structure or the officials responsible for it.

Paul H. Wangness, *A History of the Unification of the City of Anchorage and the Greater Anchorage Area Borough*, August 1977, p. 83.

The challenges that officials of the newly formed Municipality of Anchorage faced twenty-five years ago are similar to those that would face officials of the proposed Municipality of Fairbanks in the future. For example, while officials of the Municipality of Fairbanks would be faced with eight different collective bargaining agreements, officials of the Municipality of Anchorage had to deal with nine different labor agreements and "17 major items and 40 minor items of conflict concerning pay,

fringes, etc." *Ibid.*, p. 91. They also had to integrate municipal ordinances which, in the case of Anchorage, was characterized as an event that was "a truly significant landmark because of the number of policies which went into the codification." *Ibid.*, p. 95.

Again, transition to a unified municipal government in Anchorage was not easy. Details of the difficulties encountered are noted in Chapter 7 of *A History of the Unification of the City of Anchorage and the Greater Anchorage Area Borough*, included in this report as Appendix E. That fourteen-page discussion will convey to those who are faced with considering the merits of the pending Fairbanks consolidation proposal (LBC, local officials, and citizens) that any consolidation or unification of major municipalities will face significant transition challenges. However, there is a strong sense among current and former officials of the Municipality of Anchorage, City and Borough of Juneau, and City and Borough of Sitka that overcoming the difficulties of unification was worth the effort because it has resulted in a superior form of local government.⁵³

The Petition includes a nine-page transition plan. This transition plan notes that AS 29.06.150 provides that the proposed municipality will succeed to all powers, duties, rights, assets and liabilities of the municipalities to be dissolved by consolidation. Additionally, it notes that AS 29.06.160 provides that the ordinances, resolutions, regulations, procedures and orders of the municipalities dissolved through consolidation remain in force in their respective territories until superseded by the action of the new municipality.

53 This conclusion is based on anecdotal accounts from individuals including Vic Fischer, former Anchorage Mayor George Sullivan, former State Senator and former Anchorage Assembly member Arliss Sturgulewski, former Juneau Assembly member and former Juneau Attorney Lee Sharp, former Juneau Mayors Ernie Polley and Ginny Chitwood, Former Juneau Charter Commissioner Mike Grummett, former Greater Juneau Borough Attorney Billy G. Berrier, and former Sitka Mayor John Dapcevich.



The transition plan notes that the Petitioners consulted officials of the City of Fairbanks and the Fairbanks North Star Borough. The record indicates that the Borough offered a number of comments concerning a draft transition plan in August 1998.⁵⁴

The plan describes the manner in which the elections on consolidation would occur. The first being on the proposition for consolidation. If that is approved, a second election for initial officials of the consolidated borough would occur.

The transition plan also reiterates and summarizes other parts of the petition describing the nature of proposed consolidated borough (e.g., areawide, nonareawide, and service area functions). It also makes general observations about the effects of the proposed consolidation on employees and the organization of the proposed new government.

The transition plan calls for the City of Fairbanks permanent fund to be established as a trust fund for the benefit of and use by the proposed new Urban Service Area. The Petitioners' reply brief also included a 1½ page supplemental discussion of the proposed service area trust urging the Local Boundary Commission to designate the proposed Municipality of Fairbanks as the trustee.⁵⁵

The proposal to establish a trust endowed with the City's permanent fund for the benefit of the Urban Service Area seems entirely reasonable and appropriate. The same philosophy would

apply to the "Techite Pipe proceeds" referenced earlier. State law contains numerous provisions that expressly or implicitly provide for the allocation of borough assets, including revenues and other property, on the basis of areawide, nonareawide, and service area jurisdictional interests. The following offers several examples of such:

- AS 29.35.110 provides that, "Borough revenues received through taxes collected on an areawide basis by the borough may be expended on general administrative costs and on areawide functions only. Borough revenues received through taxes collected on a nonareawide basis may be expended on general administrative costs and functions that render service only to the area outside all cities in the borough." Unstated, but reasonably implied in that statute is that 'borough revenues received through taxes collected on a service area basis may be expended on general administrative costs and functions that render service only within that service area.'
- AS 29.35.340(a) provides, "On acquisition of an areawide power the first or second class borough succeeds to all of the rights, powers, and duties of any city or service area with respect to that power. The borough succeeds to claims, franchises, and other contractual obligations, liability for bonded and all other indebtedness, *and to all of the right, title, and interest in the real and personal property held by a city or service area for the exercise of the power.*" (emphasis added). The statute clearly implies that property can be

⁵⁴ See letter of August 18, 1998 from Ralph S. Malone, Jr., FNSB Chief of Staff to Don Lowell.

⁵⁵ Also included in the reply brief were 9 pages copied from *McQuillan Municipal Corporations* dealing with municipal trusts (§§ 28.25, 28.26, 28.27, 28.33 28.34, 28.35, and 28.36).



held for the benefit of a particular service area.⁵⁶

- AS 29.45.010(a) provides that “A unified municipality may levy a property tax. A borough may levy (1) an areawide property tax for areawide functions; (2) a nonareawide property tax for functions limited to the area outside cities; (3) *a property tax in a service area for functions limited to the service area.* (emphasis added)
- AS 29.47.440(a) provides that, “A borough may incur indebtedness on (1) an areawide basis for areawide functions; or (2) a nonareawide basis for functions performed only in the borough area outside all cities; or (3) a service area basis for functions performed only in a service area.”
- AS 29.47.450 provides that “The indebtedness of a service area acquired under AS 29.47.440 remains the indebtedness of the area that incurred the debt, notwithstanding a subsequent court determination that the service area was not validly formed under law or by virtue of a defect in the proceedings creating the service area. All property in the service area remains subject to taxation to pay the bonded indebtedness.”
- AS 29.60.050(a) provides that, “An equalization entitlement generated by the tax levy of a taxing unit may be used only for authorized expenditures of that taxing unit, but up to 15 percent of the payment of an equalization entitlement generated by areawide revenue of a municipality may be used by

the municipality for areawide or nonareawide purposes at the discretion of its governing body. This subsection applies to home rule and general law municipalities.” The term “taxing unit” is defined by AS 29.60.080 to include a service area.

- 3 AAC 130.052 provides that, “An applicant that is a municipality must meet the following standards to qualify for a payment for road maintenance under AS 29.60.110 ... (4) if the applicant is a borough that provides road maintenance services by service area, the applicant must agree to allocate the amount the applicant receives under AS 29.60.110, including the cost-of-living differential allowed under AS 29.60.160, for road maintenance within a service area, to that service area.”

While the transition plan presented with the Petition does indeed contain certain errors as cited by the FNSB, DCED considers the errors to be of no overriding consequence. As the FNSB noted, State law governs transition with regard to matters in which errors were made.

(3) DCED’s Conclusion Concerning Standards for Transition Plan

A principal purpose for the requirement by the Local Boundary Commission for a transition plan is to demonstrate a reasonable certainty that there is both intent and capability to provide essential services. [3 AAC 110.900(a)] The requirement for a transition plan applies to every action that comes before the Local

⁵⁶ The statute seems to neglect to make appropriate distinctions between cities and service areas of organized boroughs. DCED recognizes that unlike a city government, a service area in an organized borough is not an autonomous government. The character of service areas in the unorganized borough is addressed in footnote 25 and also in the definitions in Appendix A of this report. DCED does not believe that organized borough service areas have the capacity to own property outright, however, clearly the borough has the capacity to reserve the enjoyment of certain properties for the benefit of particular service areas on whose behalf the property was acquired.



Boundary Commission. In addition to consolidations, these include municipal incorporations, annexations, detachments, mergers, dissolutions, and city reclassifications. In certain instances, transition plans take on greater significance (e.g., unorganized areas in which there is no clearly demonstrated history of providing services, or cases where a local government is proposed to be dissolved and details must be carefully set out for provision of future services and distribution of assets and liabilities). There are several factors which make a transition plan less critical in this particular instance. These include the size and maturity of the community and region involved, the substantial capacity of the local governments involved, and the limited nature of the changes that would result from consolidation. Given these circumstances, DCED concludes that the standards set out in 3 AAC 110.900 are reasonably satisfied with respect to the pending Petition.

2. Impact of Consolidation on Equal Rights

(1) Views of the Parties

Federal law (43 U.S.C. 1973) subjects municipal consolidations in Alaska to review under the Federal Voting Rights Act. This Federal requirement ensures that changes in voting rights, practices and procedures (including those brought about by consolidation) will not result in “a denial or abridgement of the right of any citizen of the United States to vote on account of race or color” or because a citizen is a “member of a language minority group.” (42 U.S.C. 1973) Additionally, State law provides that, “A petition

will not be approved by the commission if the effect of the proposed change denies any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin.” 3 AAC 110.910.

No one in this proceeding has alleged that consolidation would deny civil or political rights to any one because of race, color, creed, sex, or national origin.

(2) DCED’s Analysis and Conclusion

There is no evidence to suggest that consolidation of the two local governments in Fairbanks will result in any violation of the federal Voting Rights Act. Consolidation will not alter the boundaries of the Fairbanks North Star Borough. Further, the consolidation has been proposed to serve legitimate needs and to accomplish legitimate public policy objectives.

Part D. Overall Conclusions and Recommendations.

In summary, DCED has concluded that all applicable standards for consolidation of the home rule City of Fairbanks and the second class Fairbanks North Star Borough are satisfied by the pending proposal and that the proposal is in the best interests of the State.

Vic Fischer, Alaska Constitutional Convention delegate and expert on local government in Alaska, summed up the nature of consolidation



well when he recently wrote regarding the pending Ketchikan consolidation proposal that “There are many policy and technical aspects to a municipal consolidation, though in the end it is a political decision.” Fischer II, *supra*, p. 1.

Based on the analysis in this preliminary report, DCED recommends that the Local Boundary Commission consider amending the pending consolidation petition to provide for areawide

economic development powers for the proposed consolidated borough. Following such consideration, DCED further recommends that the Commission approve the petition for consolidation of the City of Fairbanks and the Fairbanks North Star Borough.⁵⁷

57 There are certain technical issues relating to the manner in which the consolidation proposal, if approved by the Local Boundary Commission, would be put to a vote. DCED is conferring with the State Attorney General’s Office on the matter. Appendix F of this report is a copy of DCED’s inquiry to the Attorney General’s Office concerning this matter. DCED anticipates that guidance will be provided on the matter in DCED’s final report on the pending consolidation proposal.



Appendix



Key Terms and Acronyms

Unless the context in which the terms and acronyms listed below are used in this report suggests otherwise, they are defined as follows:

“areawide” means the area throughout the existing Fairbanks North Star Borough or the area throughout the proposed Municipality of Fairbanks;

“Borough” means the Fairbanks North Star Borough, a second class borough incorporated on January 1, 1964;

“City” means the City of Fairbanks, which was incorporated on November 10, 1903 and attained home rule status on November 22, 1960;

“City Brief” means the July 28, 2000 responsive brief of the City of Fairbanks filed with the Local Boundary Commission under 3 AAC 110.480 in opposition to the consolidation proposal; the brief is entitled “Brief of the City of Fairbanks”;

“Commission” means the Alaska Local Boundary Commission;

“consolidation” means the concurrent (1) dissolution the Fairbanks North Star Borough and its reconstitution as the Municipality of Fairbanks, and (2) dissolution of the City of Fairbanks and its reconstitution as the Urban Service Area;

“correspondents” means Bonnie Williams and James E. Moody, who submitted timely letters to the Local Boundary Commission concerning the consolidation proposal;

“DCED” means the Alaska Department of Community and Economic Development;

“FNSB” means the Fairbanks North Star Borough;

“FNSB Brief” means the July 28, 2000 48-page responsive brief and accompanying documents of the Fairbanks North Star Borough filed with the Local Boundary Commission under 3 AAC 110.480 in opposition to the consolidation proposal; the brief is entitled “Brief of the Fairbanks North Star Borough in Opposition to the Proposed Consolidation”; the accompanying documents consist of “Appendix A – Exhibits to the Brief of the Fairbanks North Star Borough in Opposition to the Proposed Consolidation” (weight, 1 lb. 6.1 oz.) and “Appendix B – Proposed Consolidation Budget to the Brief of the Fairbanks North Star Borough in Opposition to the Proposed Consolidation” (weight, 2 lbs., 10.7 oz.);

“general law municipality” means a municipal corporation and political subdivision of the State of Alaska that has legislative powers conferred by State law; it may be an unchartered first class borough, second class borough, third class borough, first class city, or second class city organized under the laws of the State of Alaska;



“home rule municipality” means a municipal corporation and political subdivision of the State of Alaska that has all legislative powers not prohibited by law or charter; it may be a city or a borough (including a unified municipality) that has adopted a home rule charter;

“ITA” means Interior Taxpayers’ Association, Inc., a non-profit corporation established in 1987 whose self-described purpose is “to benefit the taxpayers in the interior of Alaska”;

“ITA Brief” means the July 30, 2000 responsive brief of the Interior Taxpayers’ Association, Inc., filed with the Local Boundary Commission under 3 AAC 110.480 in opposition to the consolidation proposal, the document is titled “Brief”;

“LBC” means the Alaska Local Boundary Commission;

“Petition” means the March 16, 2000 proposal for consolidation entitled “Petition for Consolidation of the City of Fairbanks and the Fairbanks North Star Borough”;

“Petitioners” means the 4,042 qualified voters of the Fairbanks North Star Borough (1,416 of whom are also voters of the City of Fairbanks) that signed the Petition for consolidation;

“Petitioners’ Representative” means Don Lowell, the designated representative of the 4,042 Petitioners for consolidation;

“nonareawide” means the current area of the Fairbanks North Star Borough outside both the City of Fairbanks and the City of North Pole; and, if consolidation is approved, it would be the area of the Municipality of Fairbanks outside the City of North Pole;

“Reply Brief” means the reply brief filed by the Petitioners with the Local Boundary Commission under 3 AAC 110.490 on August 25, 2000 in reply to the responsive briefs filed by the Fairbanks North Star Borough, City of Fairbanks, and the Interior Taxpayers’ Association, Inc., and the letters from the two correspondents;

“respondents” means those organizations that filed responsive briefs under 3 AAC 110.480; in this proceeding, the respondents consist of the Fairbanks North Star Borough, City of Fairbanks, and Interior Taxpayers’ Association, Incorporated;

“service area” means an area in which borough services are provided that are not offered on an areawide or nonareawide basis, or in which a higher or different level of areawide or nonareawide services are provided; borough service areas are not local governments, they lack legislative and executive powers; nonetheless, borough service areas are local government *units* in the context of the minimum of local government units clause found in Article X, § 1 of Alaska’s Constitution;

“State” means the State of Alaska government;

“territory” means the estimated 7,361 square miles within the current boundaries of the Fairbanks North Star Borough; and

“Urban Service Area” means the proposed service area of the Municipality of Fairbanks comprising an estimated 33.8 square miles that would displace the City of Fairbanks if consolidation occurs.



Appendix



Biographical Information About Current Local Boundary Commission Members

The Commission consists of five members appointed by the Governor for overlapping terms of five years. Members serve at the pleasure of the Governor. The Chairperson is appointed from the state at-large and one member is appointed from each of Alaska's four judicial districts. Members serve without compensation. Appointments to the Commission are made, "...on the basis of interest in public affairs, good judgment, knowledge and ability in the field ... and with a view to providing diversity of interest and points of view in the membership." (AS 39.05.060)

Information about current Commissioners follows.



Kevin Waring, a resident of Anchorage, has served on the Commission since July 15, 1996. He was appointed Chairperson of the LBC on July 10, 1997. He was reappointed to a new term as Chairperson effective January 31, 1998.

Commissioner Waring was one of the original division directors of the former Alaska Department of Community and Regional Affairs (1973-1978). Between 1980 and the spring of 1998, he operated a planning/economics consulting firm in Anchorage. From the spring of 1998 until early 2000, Commissioner Waring was employed as manager of physical planning for the Municipality of Anchorage's Community Planning and Development Department. He has since returned to private consulting. Mr. Waring has been active on numerous Anchorage School District policy and planning committees. His current term on the LBC expires January 31, 2003.



Kathleen S. Wasserman, a resident of Pelican, is the Vice-Chairperson of the Commission. She serves from Alaska's First Judicial District. She was first appointed to the Commission for an unexpired term on September 14, 1995. She was reappointed to a new term beginning January 31, 1996. Commissioner Wasserman also serves as the current Mayor of the City of Pelican. In the past,

Commissioner Wasserman has served as a member of the Assembly of the City and Borough of Sitka and as Mayor of the City of Kasaan. Additionally, she has served as president of the Southeast Island Regional Educational Attendance Area School Board. Commissioner Wasserman is self-employed. Her present term on the Commission expires January 31, 2001.



Nancy E. Galstad serves from the Second Judicial District. She was appointed to the LBC on September 14, 1995 and reappointed to a new term effective January 31, 1999. Formerly Special Assistant to the Commissioner of the Alaska Department of Labor, Ms. Galstad now serves as the Manager of the City of Kotzebue. She is currently Second Vice-President of the Alaska Municipal Managers' Association. Ms. Galstad was a member of the Alaska Safety Advisory Council for eight years and currently serves as Vice Chair of the Alaska Municipal League Joint Insurance Association. She also served as a member of the State's Task Force on Education Funding in 1995. Ms. Galstad's current term on the LBC expires January 31, 2004.



Allan Tesche serves from the Third Judicial District and is a resident of Anchorage. He was appointed to the LBC on July 10, 1997. In April 1999, Mr. Tesche was elected to the Assembly of the Municipality of Anchorage. In the past, Mr. Tesche has served as Deputy and Assistant Municipal Attorney in Anchorage and Borough Attorney for the Matanuska-Susitna Borough. He is a founder and past president of the Alaska Municipal Attorneys' Association and served as a member of the attorneys' committee which assisted the Alaska legislature in the 1985 revisions to the Municipal Code (AS Title 29). Mr. Tesche is a shareholder in the Anchorage law firm of Russell, Tesche, Wagg, Cooper & Gabbert, PC. Mr. Tesche's term on the Commission expires January 31, 2002.



Ardith Lynch serves from the Fourth Judicial District and lives in the greater Fairbanks area. She was appointed to the LBC on December 21, 1999. Ms. Lynch is the Borough Attorney for the Fairbanks North Star Borough. She has also worked for the State of Alaska as an Assistant Attorney General and as Deputy Director of the Child Support Enforcement Division. Ms. Lynch has served on the Board of Governors of the Alaska Bar Association and is a past president of the Alaska Municipal Attorneys' Association. Her term on the Commission expires December 21, 2004.



Appendix



Regulatory Standards of the Local Boundary Commission Applicable to Consolidation of City and Borough Governments

STANDARDS FOR CONSOLIDATION OF MUNICIPALITIES

3 AAC 110.240 STANDARDS.

(a) Two or more municipalities may consolidate to form a new municipality if the new municipality meets the standards for incorporation of cities specified in 3 AAC 110.010 - 3 AAC 110.040 , or boroughs specified in 3 AAC 110.045 - 3 AAC 110.060 .

(b) Separate proceedings are not required for dissolution of the consolidating municipalities. The dissolutions occur automatically at the time of the consolidation.

3 AAC 110.250 LOCAL OPTION.

Municipalities that meet the consolidation standards required under 3 AAC 110.240, and are approved by the commission for local option consolidation, may consolidate if the petition for consolidation was submitted by the number of voters required under AS 29.06.100 (a), and if a majority of the voters in the remaining proposed new municipality vote in favor of the consolidation in a subsequent election. The election must be held in accordance with AS 29.06.140 .

STANDARDS FOR INCORPORATION OF BOROUGHS

3 AAC 110.045 COMMUNITY OF INTERESTS.

(a) The social, cultural, and economic characteristics and activities of the people in a proposed borough must be interrelated and integrated. In this regard, the commission will, in its discretion, consider relevant factors, including:



- (1) the compatibility of urban and rural areas within the proposed borough;
- (2) the compatibility of economic lifestyles, and industrial or commercial activities;
- (3) the existence throughout the proposed borough of customary and simple transportation and communication patterns; and
- (4) the extent and accommodation of spoken language differences throughout the proposed borough.

(b) Absent a specific and persuasive showing to the contrary, the commission will presume that a sufficient level of interrelationship cannot exist unless there are at least two communities in the proposed borough.

(c) The communications media and the land, water, and air transportation facilities throughout the proposed borough must allow for the level of communications and exchange necessary to develop an integrated borough government. In this regard, the commission will, in its discretion, consider relevant factors, including

- (1) transportation schedules and costs;
- (2) geographical and climatic impediments;
- (3) telephonic and teleconferencing facilities; and
- (4) public electronic media.

(d) Absent a specific and persuasive showing to the contrary, the commission will presume that communications and exchange patterns are insufficient unless all communities within a proposed borough are either connected to the seat of the proposed borough by a public roadway, regular scheduled airline flights on at least a weekly basis, a charter flight service based in the proposed borough, or sufficient electronic media communications.

3 AAC 110.050 POPULATION.

(a) The population of a proposed borough must be sufficiently large and stable to support the proposed borough government. In this regard, the commission will, in its discretion, consider relevant factors, including

- (1) total census enumerations;
- (2) durations of residency;
- (3) historical population patterns;
- (4) seasonal population changes; and
- (5) age distributions.

(b) Absent a specific and persuasive showing to the contrary, the commission will presume that the population is not large enough and stable enough to support the proposed borough government unless at least 1,000 permanent residents live in the proposed borough.



3 AAC 110.055 RESOURCES.

The economy of a proposed borough must include the human and financial resources necessary to provide essential borough services on an efficient, cost-effective level. In this regard, the commission will, in its discretion, consider relevant factors, including

- (1) the reasonably anticipated functions of the proposed borough;
- (2) the reasonably anticipated expenses of the proposed borough;
- (3) the reasonably anticipated income of the proposed borough, and its ability to collect revenue;
- (4) the feasibility and plausibility of the anticipated operating budget through the third full fiscal year of operation;
- (5) the economic base of the proposed borough;
- (6) property valuations;
- (7) land use;
- (8) existing and reasonably anticipated industrial, commercial, and resource development;
- (9) personal income of residents;
- (10) the need for and availability of employable skilled and unskilled people; and
- (11) the reasonably predictable level of commitment and interest of the population in sustaining a municipal corporation.

3 AAC 110.060 BOUNDARIES.

(a) The boundaries of a proposed borough must conform generally to natural geography, and must include all land and water necessary to provide the full development of essential borough services on an efficient, cost-effective level. In this regard, the commission will, in its discretion, consider relevant factors, including

- (1) land use and ownership patterns;
- (2) ethnicity and cultures;
- (3) population density patterns;
- (4) existing and reasonably anticipated transportation patterns and facilities;
- (5) natural geographical features and environmental factors; and
- (6) extraterritorial powers of boroughs.

(b) Absent a specific and persuasive showing to the contrary, the commission will not approve a proposed borough with boundaries extending beyond the model borough boundaries adopted by the commission.



(c) The proposed borough boundaries must conform to existing regional educational attendance area boundaries unless the commission determines, after consultation with the commissioner of the Department of Education and Early Development, that a territory of different size is better suited to the public interest in a full balance of the standards for incorporation of a borough.

(d) If a petition for incorporation of a proposed borough describes boundaries overlapping the boundaries of an existing organized borough or unified municipality, the petition for incorporation must also address and comply with all standards and procedures for detachment of the overlapping region from the existing organized borough or unified municipality. The commission will consider and treat such an incorporation petition as also being a detachment petition.



Appendix



Financial Impacts of Consolidation Projected by Judi Slajer on Behalf of the Petitioners

Department	Personnel			Expenditures		
	Present Combined Staffs	Proposed Staff	Change	Present Combined Budget	Proposed Budget	Change
DEPARTMENTS WITH OVERLAPPING FUNCTIONS						
ELECTED OFFICIALS (a)	18.00	11.00	(7.00)	392,701	374,350	(18,351)
MUNICIPAL CLERK (a)	10.00	8.00	(2.00)	958,431	740,595	(217,836)
ADMINISTRATION	13.00	12.00	(1.00)	1,203,939	1,120,204	(83,735)
LAW	12.30	9.30	(3.00)	1,100,031	1,074,101	(25,930)
FINANCIAL SERVICES	40.65	40.15	(0.50)	7,668,174	7,468,801	(199,373)
COMPUTER SERVICES	18.00	17.00	(1.00)	1,978,573	1,875,282	(103,291)
DEPARTMENTS WITH LIMITED OVERLAPPING FUNCTIONS						
GENERAL SERVICES	7.50	9.50	2.00	1,044,350	1,322,044	277,694
PUBLIC WORKS	105.50	106.00	0.50	14,203,451	15,323,150	1,119,699
EMERGENCY OPERATIONS	1.38	1.38	0.00	1,421,690	1,477,190	55,500
DEPARTMENTS WITH STAND ALONE FUNCTIONS						
ASSESSING	23.00	23.00	0.00	1,701,380	1,701,380	0
COMMUNITY PLANNING	18.00	18.00	0.00	1,158,870	1,158,870	0
DIRECT SERVICES	16.41	16.41	0.00	1,237,000	1,237,000	0
LIBRARY SERVICES	49.35	49.35	0.00	3,165,290	3,165,290	0
PARKS & RECREATION	48.43	48.43	0.00	4,485,720	4,485,720	0
TRANSPORTATION	36.86	36.86	0.00	3,527,830	3,527,830	0
LAND MANAGEMENT	9.00	9.00	0.00	751,170	751,170	0
POLICE	57.00	57.00	0.00	5,256,686	5,256,686	0
FIRE	40.00	40.00	0.00	3,845,467	3,845,467	0
CAPITAL				3,513,142	3,513,142	0
NON-DEPARTMENTAL				4,266,559	2,882,459	(1,384,100)
INTERGOVERNMENTAL				1,893,400	1,893,400	0
AREA WIDE DEBT SERVICE				11,283,040	11,283,040	0
NON-AREA WIDE DEBT				257,570	257,570	0
EDUCATION				32,045,700	32,045,700	0
	524.37	512.37	(12.00)	108,360,164	107,780,441	(579,723)
Council Members not shown as employees in City Budget----->			7.00			
Net Change----->			(5.00)	\$108,360,164	\$107,780,441	\$(579,723)

(a) Elected Officials and Clerk are shown separately in this table, however, are two Sections of one Department





Appendix



Chapter 7 of A History of the Unification of the City of Anchorage and the Greater Anchorage Area Borough

A HISTORY OF THE UNIFICATION OF THE
CITY OF ANCHORAGE AND THE GREATER ANCHORAGE AREA BOROUGH

Prepared by

Paul H. Wangness
Principal Researcher

AK

Final Research Report
Anchorage Urban Observatory
November 1977

Dr. Richard L. Ender
Director

* * * * *

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CHAPTER VII

POST-UNIFICATION

It is fair to characterize the post-unification period as starting with chaos, and working on through sorting out, resolution, and the onset of institutionalization. The pluses, which worked in the favor of the officials responsible for getting the new government going, included a well-conceived Charter which provided guidelines without unnecessary details and a group of competent, dedicated officials. The minuses included the inability or unwillingness of some employees and officials to accept the new structure or the officials responsible for it.

It is the intent of this section to describe the events which took place to get the government going.

Charter Provisions

The framers of the Charter wisely decided on a general, rather than a detailed document. A more detailed document might have prevented some of the chaos which occurred in the early days by providing organizational structure, procedural guidelines and other instructions to officials. It is likely, however, that the detailed document, so helpful in the very early stages, would have become a cumbersome administrative burden in the day-to-day operation of the government. As it was written, the Charter provided for the Assembly with the "legislative power": the power to appoint the Clerk and Ombudsman and other staff as required; the authority to adopt an administrative code, provide for boards and commissions, and, unless otherwise provided, confirm mayoral appointments to the boards; the power to create or designate itself as a board of review, adjustment, or equalization; establishment of community councils and service areas or assessment districts; power to adopt and implement a comprehensive plan; authority to approve budgets submitted by the mayor and to provide for competitive bidding and financial audits; sole power for the taxing and the sale of bonds; and power to review and approve the mayor's plan of organization of the executive branch of the government. It is to be noted that each of the sections dealing with the foregoing powers is couched in general terms, leaving substantial areas of discretion to the Assembly and the executive branch.



Of particular importance to the immediate post-unification period was Article XIX, Transition. The sixteen sections of this Article provided specific details: the initial election and provisions for run-off elections if required; initial terms of Assemblymen; organization of Assembly; the need to adopt a Code of Ordinances by September 1, 1977; Assembly review of the mayor's proposed organization plan for the executive branch within six months after the adoption of the Charter; provisions for employee rights and benefits; the fiscal year and specific dates for consolidated budgets and financial reports; and the appointment of a Commission on Salaries and Emoluments to establish the compensation of elected officials.

The First Chaotic Days

Immediately following the election, public services continued, it might be said, as if nothing had happened except at the top echelons with the job of putting the new government together. The mayors of the two former governments were the candidates for the office of Mayor and there was no short or long-range planning done pending the outcome of the election. (There was some contingency or "what-if" planning in some departments, but this could not be official because the city and borough department heads did not know what the organizational structure was going to be and what their role was to be in the new government, if approved.)

The Mayor's first move was to send three names to the Assembly for confirmation to three positions; all of which were mandated by the Charter. The Mayor chose Douglas Weiford to be the Municipal Manager. Weiford had been City Manager for 14 months during which time the Mayor had been Mayor of Anchorage. Weiford had 26 years of professional experience in local government as city manager and consultant. He had also served as Commissioner of Administration for the State of Wisconsin. The Mayor named Rick Garnett as Municipal Attorney. Garnett had been Charter Commission Attorney with prior legal experience with the Office of Attorney General of the State of Alaska and in private practice. For the Chief Fiscal Officer position, the Mayor named Norman Levesque, who had been the Director of Finance for the borough, and prior to that, had been Director of Finance for the City of Anchorage. In these appointments Mayor Sullivan revealed a pattern he was to follow in naming some others to posts in the new government. The pattern stressed several criteria, e.g., competence, a balancing of appointments from officials of the former city and borough and other factors.



This backbone of the eventual management team began the overwhelming task of sorting out the problems to be solved: "In the days immediately following unification, uncertainty set in and employee morale was noticeably shaken. There were literally no bosses, no one at the department or division level who was officially in charge, and no immediate answers for a variety of vital questions. A kind of organizational paralysis developed."* As these officials surveyed the situation, they realized the extent of their obstacles. There were two Personnel systems with 17 major and 40 minor differences in salary structures, classification plans, benefits, etc. There were 9 union contracts. There were different fiscal years and budgets.

Organizational Structure

Within a month the Mayor submitted an interim organizational plan to the Assembly. He noted that the Charter provided an additional five months in which to submit his final organizational plan but he wanted the interim plan to provide the necessary policy and guidance to employees, officials, and the public.

The principal feature of the organizational plan was the adoption of the "agency plan", reducing the number of major departments to eight. Without some consolidation of functions, the number of people reporting to the Mayor and Municipal Manager might have been as high as thirty-five or forty, given the very broad range of services and activities provided by the Municipality. (For example, the Municipality is at least the second most diverse conglomerate in the State with activities ranging from a port, telephone utility, police, fire, public works, health, library, museum, parks and recreation, and others.) The organization presented to the Assembly showed the seven major departments and six staff offices, including comprehensive health planning, planning staff, personnel, management and budget staff, social and special services and public information. The Assembly members generally accepted the Mayor's plan; however, they insisted on ascribing departmental status for the Planning function. The interim organizational plan went through several minor revisions before approval. With Assembly approval, the Mayor appointed department heads who, in turn, began the selection of division heads for approval by the Mayor and Assembly. The only "agency" head position not filled was that of Public Safety with the Mayor and Manager preferring to have the Police, Fire, and Civil Defense Chiefs reporting directly to them.

*D. Weiford and R. Somers, "Unification of Anchorage," Western City (March 1976), p. 10.



In accordance with the transitional article of the Charter, the Mayor submitted his final plan about six weeks before the deadline. The discussion of this recommendation generated a good deal more interest than did the interim plan. Several members of the Assembly and the Charter Commission objected to the provisions for budget preparation believing that the Office of Management and Budget weakened the position of Chief Fiscal Officer, which had been mandated by the Charter. Although the Charter language did not give the budget preparation responsibility to the Chief Fiscal Officer, it was their opinion that that was the intent. To respond to these questions and comments the Mayor and Municipal Manager, with the support of the Urban Observatory staff of the University of Alaska, Anchorage, prepared a strong statement of management philosophy. This philosophy stressed the need for budget preparation as an integral part of the management planning function and, therefore, necessarily in an organizational setting as close as possible to the Mayor's management staff. The paper also demonstrated the many vital points at which the Chief Fiscal Officer is involved in budget preparation and execution. Among other, but less critical, issues were the organization of the Office of Mayor and the division of responsibilities between the Mayor and Manager and the providing of staff services to the Assembly by members of the executive branch. A good deal of discussion was directed to the limited reduction in the number of positions following unification. The transition article of the Charter says that the plan of organization of the executive branch "...shall provide for elimination of unnecessary duplication." (Section 19.10)

In explaining the reasons why reductions were not greater, the staff concluded: unification did not affect the major services, such as police, fire, utilities and others; population growth and new services more than offset any elimination of duplication; and unification had not been "sold" on the basis of economies but rather on greater effectiveness and political participation.

Physical Locations

Shortly after unification the Mayor and Municipal Manager contracted with a University of Alaska, Anchorage faculty member to develop a facility plan to bring the two governments together. Within ten days, the plan was approved by the Mayor and two departmental moves were started. Shortly thereafter, the balance of the departments so affected were moved, but the details of the move were not worked out with the departments and there was a great deal



of confusion adding to the already prevalent feeling that unification was chaotic. The officials responsible for the moving claimed their strategy was to move city and borough people together and the confusion would help meld them into a unified team.

The physical location plan combined printing and duplicating shops, records and microfilm, form control, law libraries and others. The government remains scattered over many buildings and locations but at least the major functions are together. Several relocations have taken place since the original plan as departmental expansions have taken place and space - or facilities - have become available. A subsequent space study was not adopted when employee opposition to a move demonstrated their seeming content with the original plan. The final solution to physical location will come only with a very detailed analysis of the total present and projected needs and the construction or acquisition of facilities which will bring the functions together for more effective performance and service to the public.

Employee Attitudes and Morale

Unification meant drastic change for virtually every employee of the government: new bosses, work stations, rules and policies, co-workers and just about every facet of their working lives. Perhaps the results were predictable, but, given the uncertainties of the election process and the deliberate brevity of the Charter, there may have been few methods of implementing the changes which might have reduced employee anxieties. An apt description of the early days has been given by one of the concerned officials some 16 months after unification:

"As the programs began a settling-in period, employees of each former government huddled together, took coffee breaks and lunch together and generally proceeded with a cold war. In order to combat this problem, most former borough employees were assigned city supervisors and former city employees were supervised by borough supervisors. It was hoped that at least through staff meetings communications would be established and mutual understanding of problems would be confronted. Dual payrolls, dual personnel regulations, dual accounting procedures, different names for like forms, and, when in doubt, who to call."

He continued: "There is still a tendency on occasion to compare 'how we used to do something' and a reluctance at times to adjust, but in most cases the heavy work load



that has resulted...kept the staff too busy to find time for bickering. Most of them work long hours, well into the evening, which has resulted in a feel of "pulling together to get the job done."

At the same time, i.e., about 16 months after unification, another department head noted a different set of circumstances: "Managerially, the major problem was development of a sense of unity among the (staff). Given the history of political and legal conflict between the old city and borough, there was bound to be some feeling that the old city had won out in the election of Mayor Sullivan. This feeling led in some cases to apprehension about job status. In addition, there were differences of political philosophy and style between the operation of the old borough departments and the philosophy which prevailed after unification."

The merger of the two fire departments presented the Fire Chief with many personnel problems. As discussed later, a major problem was that of union and pay scales; however, there were other substantial differences due to the nature of the terrain and structures encountered by the former departments. The former city department was contained in rather compact area with a greater population density, more commercial and industrial and "high-rise" structures. The former borough department encountered a wider geographic area, foothills, lower density, less fire-fighting aids, e.g., hydrants. In reflecting on the situation, the Fire Chief has written: "In order to offset the former separatist's attitude among the personnel of the former fire departments, I took two major steps to offset this: (1) we mixed up the personnel with about 50 percent from each former group being re-assigned to fire stations elsewhere in the district and (2) we established fire training programs which cover all aspects of personnel training through testing and training on up to multi-company operational training. The two former groups have melted into a common attitude in a remarkably short period of time."

Ordinances and Codes

The Charter provided for the adoption of a Code of Ordinances "not later than September 1, 1977." Prior to that deadline it was necessary to reduce the confusion created by the two sets of ordinances of the former jurisdictions. The Chief of Police noted in his assessment of unification efforts that the consolidation of the two traffic and criminal codes was necessary to allow officers



and the public to have only one set of traffic and misdemeanor laws. He also noted the elimination of confusion caused by different prosecutors and courts included in these cases.

The Municipal Attorney described the work on the Code as follows: "The primary remaining task is completion of the unified municipal code. Various code titles have met obstacles along the way to enactment. The major problem seems to be lack of a firm consensus as to whether the code should constitute an extensive revision of pre-existing law or look merely to the elimination of unworkable conflicts between the codes of the former city and borough. In any event, most code titles have some political and policy implications which result in delays, even those titles which do nothing but preserve the status quo."

Management Styles and Philosophy

There were different management styles and philosophies between the former city and borough and the carry-over of these into the "new government" has created some of the problems to be resolved. Mayor Sullivan has said that it is a "new government," not a merger of the two former governments. In form that is true; however, in substance the make-up is the employees of the former governments and they remember - and behave - in the old patterns. It is important to stress that these have steadily diminished, and hopefully will be non-existent in the future. It is also important to note that not all city administrators performed in the city style and the same is true of the former borough administrators. There were, however, differences and they did present some of the post-unification difficulties.

Perhaps the basic differences were in the scope of the services of the two governments and their longevity. The city had been in business since 1920 and had operated under the Council-Manager plan, with a long succession of competent, professional managers. The city was noted for its "hardware" operations, fairly regimented and institutionalized. On the other hand, the borough was fairly new; it had grown rapidly and its services were area-wide.

In looking back, the Municipal Attorney reflected on the differences as follows: "Generally speaking, the borough operation was much more loosely controlled. Individual lawyers exercised a great deal of autonomy and policy-making discretion. Lawyers on the borough side tended to see themselves more as defenders of various causes or ideals than was true of former city attorneys. This difference was due in part to the different roles played by the two governments, the old city being primarily a "hardware" operation, while the borough dealt more with "people problems



such as zoning, health, and environmental matters. Again, however, the difference related to the personalities and philosophies of the recruiting authorities."

The differences appeared in other ways. City salaries were higher than borough salaries except in case of supervisors. The borough had more and newer equipment. The borough seemingly had a less rigid pre-expenditure control, but an elaborate system of "charge-backs" after the expenditure.

Many months after unification, the differences remain. Employees still say "we used to do it this way in the (city or borough)." There has been a difficult adjustment period. The differences have taken their toll of effectiveness.

Financial Administration

The managing of the Municipality's financial resources provided a particularly vexing set of problems throughout the post-unification period. The Charter contained a strong section on finances that was aimed primarily at the post-transition period. The transition section of the Charter, however, provided a specific timetable for conforming the different fiscal years of the two former governments. The GAAB had operated on a July 1 to June 30 fiscal year while the city had operated on a January 1 to December 31 fiscal year.

The conforming process meant that municipal officials did not have single operating and capital improvement project budgets until January 1, 1977. Until that time they had to operate with as many as three operating budgets, as well as service area and CIP budgets. There was virtually a continuing budget preparation stage throughout the early transition period as noted in the following periods:

- September 1975 - December 31, 1975 - operated under the budgets in force at the time of unification;
- January 1, 1976 - June 30, 1976 - operated under a new "city" budget adopted for all of 1976 plus the remaining six months of the "old borough" budgets;
- July 1, 1976 - December 31, 1976 - operated under the new "city" budget for the remaining six months plus a new transition budget for the "borough" as required in the Charter transition section.
- January 1, 1977 - December 31, 1977 - the first Municipality budget.



The accounting systems of the two former governments were in effect until early 1977 and were run dually in their previous modes as well as with a management information system which was intended to unify the two accounting systems while, at the same time, providing a highly sophisticated financial management tool. To develop the system, the Municipality awarded a very sizeable consulting contract to a leading certified public accounting firm and also committed sizeable expenditures for staff time and hardware acquisitions. The many delays in getting the system "up and running" have led some to conclude that it was a mistake to attempt the unification of two accounting systems concurrently with the development of a highly sophisticated management information system.

The administrative organization for the managing of the financial resources consisted of the Department of Finance and the Office of Management and Budget. The Department of Finance included the department head and his staff, Controller Division, Property Appraisal Division, Treasury Division and Purchasing Division. This represented a merging of the very substantial accounting activities of the former city, which included the utility accounting for municipal light and power, water and sewer, telephone, as well as the area-wide functions of the GAAB in administering the property tax and other revenue measures.

As previously noted, the budget function was assigned to the Office of Management & Budget to retain that essential policy-formulating process very close to the Mayor and Municipal Manager.

Personnel and Labor Relations

Unification brought together the personnel systems of the city and the GAAB with nine different labor agreements (7 for the city and 2 for the borough) and 17 major items and 40 minor items of conflict concerning pay, fringes, etc. These very substantial differences created severe problems in the initial merging of departments and then in the ongoing personnel management of the line departments, the staff offices, and at the level of the Mayor and the Municipal Assembly. For example, the merging of the two fire departments brought employees side-by-side with different titles, rates of pay, and fringe benefits, and two IAFF locals. These differences persisted for many months while officials developed remedying solutions.

Two of the major remedying solutions were the Employee Relations Ordinance (see Appendix) and the Personnel Regulations.



The development of the Labor Relations Ordinance was seen as a critical initial step to establish the labor relations policies of the Municipality, to reduce the number of labor agreements, and to lay the groundwork to correlate the labor agreements with the Municipality-wide personnel regulations. The development of the Ordinance was assigned to a committee which consisted of representatives from the Mayor's staff, the Assembly, and several unions. The committee prepared a draft and submitted it to the Mayor for presentation to the Assembly. The Ordinance was adopted after a series of public hearings, work sessions, and public debates, trying to reconcile the differing views on the comprehensive Ordinance. Major elements of the Ordinance were the creation of a Labor Relations Board, the establishment of ground rules for labor negotiation, general policies of the Municipality regarding employee organizations, and the grievance procedure. The Ordinance also gave the Assembly the authority to define bargaining units. In another ordinance, the Assembly did define and designate five bargaining units by naming the units and designating which classifications would be represented by each. The Ordinance also provided for representation methods. Thus, the number of agreements would be reduced from nine to five. In one of the representation selections, there were three elections and court cases. The Municipal officials were primarily observers as the two unions battled to be the bargaining unit.

The Charter had provided that labor contracts in force at the time of unification would remain in force until re-negotiated. This provision, plus the labor relations Ordinances, set the framework for resolving the conflicts between the personnel policies and practices of the two former governments, at least as far as the unionized employees were concerned. A particularly complicating factor was a provision of the labor agreement which had been accepted on the eve of the unification election. At that meeting, the Borough Assembly approved a labor agreement with a union representing non-craft employees. This agreement, negotiated by union and management personnel of the borough, included a clause which provided that, if unification occurred, the agreement could be reopened for negotiations on wages and benefits for parity between that union and one or more of any of the other bargaining units. (The agreement had provided for a 20% salary increase.) Immediately after unification, the union asked for a reopening for further negotiations to achieve parity with the provisions of the other contracts in force. (One particular problem was defining parity with the union preferring to demand parity when it meant an upward adjustment for members while rejecting parity when it meant a downward adjustment.)



The Personnel Regulations were adopted in May 1976. Until that adoption Municipality officials continued to operate under the ordinances and rules of the two former governments (for example, there were two classification and pay plans, two grievance procedures, etc. for those employees not covered by labor agreements.) The Personnel Regulations are becoming a part of each labor agreement adopted subsequent to the Labor Relations Ordinance and the Personnel Regulations.

Mayor and Assembly Relations

The Charter provided for a strong mayor position and a strong legislative body. The two former governments had strong legislative bodies so that the concept was not unfamiliar to the newly-elected Assembly members, many of whom had served on the GAAB Assembly and/or the City Council. The strong executive position was new and the transition period provided several episodes of disagreement. One of these dealt with staff support for the Assembly and, although the Charter provided that the Assembly could "engage such legal counsel, other professional advisors and staff as it requires in the execution of its legislative functions," (Article IV, Section 4.06, Anchorage Municipal Charter), it was decided that executive departments would supply the services upon request. Another matter dealt with control of the agenda for Assembly meetings. Some Assembly members thought that the Mayor should not have control of Assembly proceedings. The Mayor contended that the agenda consisted mainly of materials from departments of the executive branch presented to the Assembly with the Mayor's approval and, therefore, the Mayor should prepare the agenda. The Mayor prevailed and established an Agenda Control staff in his office to handle the very large volume of material for the Assembly's busy schedule.

Although the Charter provided only that the Assembly meet at least twice a month, the Assembly maintained a very heavy schedule for over a year with two official and two or three work sessions each week. The Mayor has attended almost all of the official sessions and many of the work sessions. (In accordance with a Charter provision (Article XVII, Section 17.05(b)), Assembly meetings do not extend beyond midnight. This Charter provision was included in response to severe public criticism of the former GAAB Assembly which often continued beyond midnight with the city-borough bickering.

The Charter provided for a Commission on Salaries and Emoluments, (Article V, Section 5.08) "which shall establish the compensation, including salaries, benefits, and allowances, if any, of elected officials." The



Commission was appointed and its recommendations on the Mayor's salary and emoluments were challenged by some Assembly members who believed that he was not entitled to seniority pay based on his prior service with the city.

A prolonged battle between the Mayor and some Assembly members was generated over the ordinance prescribing the powers and duties of the ombudsman. The Charter Commission had included the office of an ombudsman to assure the electorate the unified government would be responsive. Provisions for the office were included under the Article establishing the legislative branch (Article IV, Section 4.07). Some Assembly members favored a strong ombudsman position with such powers as that of subpoena of departmental records so as to insure complete and thorough review of departmental actions. The Mayor vetoed the ordinance with that provision and, after considerable discussion and adjustment, a somewhat "watered-down" provision was approved.

Boards, Commissions, and Community Councils

The Charter provides for advisory, regulatory, appellate or quasi-judicial boards or commissions upon adoption of an ordinance by the Assembly (Article V, Section 5.07.) In March 1977 the Assembly adopted an ordinance with five categories. The categories and boards and commissions included in each are:

1. Commission on Salaries and Emoluments; Election Commissions
2. Regulatory and Adjudicatory Boards and Commissions
Air Pollution Control Commission; Anchorage Port Commission; Board of Building Regulation Examiners and Appeals; Board of Ethics; Board of Mechanical Examiners and Appeal; Board of Equalization; Employee Relations Board; Personnel Review Board; Planning and Zoning Commission; Platting Board; Transportation Commission; Zoning Board of Examiners and Appeals
3. Technical Advisory Boards
Anchorage Economic Development Commission; Bidder Review Board; Budget Advisory Commission; Investment Advisory Commission; School Budget Advisory Commission
4. Program Advisory Boards
Civil Defense and Disaster Advisory Commission; Historical and Fine Arts Commission; Historical Landmark Preservation Commission; Library Advisory Board; Medical Advisory Board; Municipal Health



- Commission; Opportunities for the Handicapped Commission; Parking and Traffic Commission; Public Transit Advisory Board; Senior Citizens' Advisory Commission; Sister City Commission; Urban Beautification Commission
5. Utility Commissions
Anchorage Telephone Commission; Anchorage Water Commission; Municipal Light and Power Commission.

In another measure of providing responsive government, the Charter Commission included a separate article on Community Councils (Article VIII.) The article prescribes adoption of an ordinance with procedures for "negotiation between the local government and each community council with respect to the duties and responsibilities of the community council." Such an ordinance was adopted; the Municipal Clerk's office includes a community council coordinator position. The number of councils has grown steadily as has their degree of involvement. Some have been very effective means of conveying community desires to the legislative and elective branches, but others have suffered from apathy and lack of organization.

Conclusion of the Transition Period

It could perhaps be expected that one measure of success of the unified government might be an end of the transition period. However that might be defined, there was probably some point when the number of new issues outnumbered those of dealing with problems of merging two governments or developing strictly procedural details for the new government. The perspective would probably vary depending on the department or program from which the view of transition is taken. For example, the adoption of the Municipal Code represented a truly significant landmark because of the number of policies which went into the codification. The Code has been adopted; the legal staff, the executive, and the Assembly can now be wholly concerned with the "new" legal business. From the perspective of personnel management, the transition is not yet complete because there remain some position classification matters, involving the continuing problem of parity, which must be resolved. (A study of some 800 positions by an outside consulting firm created a storm of protest and the Assembly side-stepped the issue.) On the accomplishment side of personnel management, the governmental officials, both legislative and executive, may point with pride to the labor relations ordinances and the personnel regulations.



From the perspective of financial administration the troublesome problems of the management information system represented a true sense of frustration and non-accomplishment on the part of municipal officials. When the system is finally "up and running," it can truly be said that the unification has been complete.

The organization of the new government is, and has been, stable. Appointments of competent people have been made. There has not been a high amount of turnover. The Mayor, Municipal Manager, and department heads have worked together to create a management team and despite the heavy pressure of two years of transition, there is a strong sense of success and challenge.





Appendix



October 31, 2000 Memorandum to the Attorney General's Office Regarding Consolidation Election

MEMORANDUM


State of Alaska

Department of Community & Economic Development

TO: Marjorie Vandor
Assistant Attorney General
Department of Law

DATE: October 31, 2000

FILE NO:

FROM: Dan Bockhorst 
LBC Staff Supervisor
Division of Community &
Business Development

TELEPHONE: 907-269-4559

SUBJECT: Propositions to be placed
before voters regarding
Fairbanks consolidation
petition

This is to request your guidance concerning what propositions should be placed before which voters in the event the Local Boundary Commission approves the pending proposal for consolidation of local governments in Fairbanks.

Clearly, there must be one proposition to ask whether voters wish to consolidate the City of Fairbanks and the Fairbanks North Star Borough. AS 29.06.140, as interpreted by 3 AAC 110.250, requires the vote on the Fairbanks consolidation proposition to be a borough-wide vote.

It is unclear to me, however, whether certain other propositions must also be placed before voters in all or certain portions of the territory proposed for consolidation. Specifically:

1. Must voters in the existing home rule City of Fairbanks (which is proposed to be reconstituted as the Urban Service Area of a new general law [second class] borough) also vote on propositions to authorize the new consolidated general law borough to:
 - levy in the Urban Service Area a 5% sales tax on liquor;
 - levy in the Urban Service Area an 8% sales tax on tobacco; and
 - exercise in the Urban Service Area the powers of fire protection, law enforcement, environmental services, building department, engineering department, and public works department?
2. Must areawide voters authorize the borough to exercise the new areawide power of cemeteries?
3. Must areawide voters authorize the borough to levy an areawide 8% bed tax?

Regarding the Question of Service Area Propositions.

The following factors may support the view that voters in the existing City of Fairbanks should not be required to vote on propositions to authorize the borough to levy sales taxes and exercise certain powers on a service area basis in the proposed Urban Service Area:

1. The City of Fairbanks currently levies a 5% liquor sales tax and an 8% tobacco sales tax. The City of Fairbanks also currently exercises the powers of fire protection, law enforcement, environmental services, building department, engineering department, and public works department.
2. AS 29.06.150(b) states that, "When two or more municipalities consolidate, the newly incorporated municipality succeeds to the rights, powers, duties, assets, and liabilities of the consolidated municipalities."
3. The Fairbanks consolidation petition states at Section 9 (page 4), "To the extent that voter approval is required to establish service areas listed in Exhibit E-1, to authorize the exercise of service area powers listed in Exhibit E-3 and to authorize the levy of service area taxes listed in Exhibit E-3, as may be amended on a reasonable basis by the Local Boundary Commission following a public hearing on this petition, voter approval will be deemed to have been granted upon voter approval of the consolidation." (It is recognized, of course, that this provision of the petition cannot supercede State law.)

Factors that may support the argument in favor of requiring voters in the existing City of Fairbanks (proposed Urban Service Area) to vote on propositions to authorize the borough to levy sales taxes and exercise certain powers on a service area basis in the proposed Urban Service Area include the following:

1. Authorization for the City of Fairbanks to levy the 5% liquor sales tax and 8% tobacco sales tax is derived from home rule enactments. Unlike general law municipal governments in Alaska, the Charter of the home rule City of Fairbanks does not require voter approval of sales tax propositions. The Fairbanks City Council adopted ordinances to authorize the levy of the two taxes. According to City staff, voters in the City of Fairbanks ratified the alcohol tax, but never ratified the tobacco tax .
2. The proposed consolidated borough would be a general law borough. Unlike the home rule City of Fairbanks, it is required by AS 29.45.670 to obtain voter approval of any sales taxes. AS 29.45.670 states, "A new sales and use tax or an increase in the rate of levy of a sales tax approved by ordinance does not take effect until ratified by a majority of the voters at an election."
3. AS 29.35.490 provides that, "A second class borough may exercise in a service area any power . . . if the exercise of the power is approved by a majority of the voters residing in the service area . . ."

Regarding the Question of Additional Areawide Power of Cemeteries.

The only existing local government in the territory proposed for consolidation that presently provides cemeteries is the City of Fairbanks. That power is not listed in the petition among the proposed Urban Service Area functions if consolidation occurs. Neither is it listed in the petition as an areawide or nonareawide function of the proposed consolidated borough.

The Fairbanks North Star Borough assumes in its responsive brief that cemeteries would become an areawide function of the consolidated borough. That seems like a reasonable assumption to me. If the Commission amends the Fairbanks consolidation petition to provide for such, would the acquisition of that areawide power by the new second class consolidated borough be subject to AS 29.35.300(b) and AS 29.35.330(c)?

AS 29.35.300(b) states: "A second class borough acquires an additional power by transfer of the power by a city or by holding an election on the question. For acquisition of an areawide power, the election shall be held areawide. . . ."

AS 29.35.330(c) states: "A vote on the question of adding an areawide power in a first or second class borough shall be tabulated in two separate classifications. One shall consist of all votes cast in all cities located in the borough. The other shall consist of all votes cast in the borough area outside all cities. If the majority of the votes cast in each classification is favorable, the borough shall assume the added power within 30 days after certification of the election results."

The Fairbanks consolidation petition states at Section 7 (page 2), "To the extent that voter approval is required to grant the powers and authority for areawide or non-areawide services listed in this petition, as may be amended on a reasonable basis by the Local Boundary Commission following a public hearing on this petition, voter approval will be deemed to have been granted upon voter approval of the consolidation." (Again, it is recognized that this provision of the petition cannot supercede State law).

Regarding the Question of Additional Areawide Levy of the 8% Bed Tax.

The Fairbanks North Star Borough currently levies an areawide 8% bed tax. However, the Borough grants an exemption for hotel operators who pay a similar tax to another municipality. The City of Fairbanks also levies an 8% bed tax. Thus, hotel operators in the City of Fairbanks pay just the City tax, not the Borough tax. . The consolidation petition proposes an areawide 8% bed tax.

Is areawide voter approval for the 8% bed tax levy by the consolidated borough necessary? The previously noted factors relevant to the question of the service area sales tax levies are relevant to this question as well.

Section 8 of the Fairbanks consolidation petition states, "To the extent that voter approval is required to grant authority to levy proposed areawide taxes listed in this petition, as may be

amended on a reasonable basis by the Local Boundary Commission following a public hearing on this petition, it will be deemed to have been granted upon voter approval of the consolidation." (Here again, it is noted that this provision of the petition cannot supercede State law.)

If voter approval of the taxes is necessary, propositions for the levy of the taxes may be placed before the voters at the time of incorporation pursuant to AS 29.45.680. Since a consolidation involves incorporation, I presume that AS 29.45.680 would apply to consolidations as well.

Please call me at 269-4559 if you wish to discuss this matter or if you would like additional information.